

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND

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IN THE MATTER OF:
ARTERY/RYLAND FAIRLAND LLC AND
MARYLAND-NATIONAL CAPITAL PARK
AND PLANNING COMMISSION

Contract Purchaser & Applicant

Zoning Application Nos. G-813 and
G-814

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Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. SUMMARY

This Report and Recommendation addresses two zoning applications that have been considered in a single proceeding because they relate to a single proposed development. Two separate reclassification requests were filed because the combined property is bisected by property owned by PEPCO, which is neither part of the proposed development nor part of the zoning applications. The combined property that is the subject of these zoning requests (the “subject property”) measures a total of approximately 314 acres. The subject property is part of a larger plan for a golf course community that would straddle the boundary between Montgomery County and Prince George’s County, with residential neighborhoods and parts of the golf course in each County.

The subject property includes parts of Fairland Recreational Park, which is managed by the Maryland-National Capital Park and Planning Commission. The principal components of the park that are included in these rezonings are the existing public golf course and part of a wooded area with trails, which the public uses for hiking, biking and horseback riding. The remainder of the subject property is privately owned. The proposed development would replace the existing golf course with a larger, more modern course and construct a total of 396 single-family homes, predominantly detached, in five distinct neighborhoods arranged among the golf holes.

This record in these cases includes nearly 1,000 pages of transcript and more than 100 exhibits. Participants at the hearing included the Applicants’ representatives and their six expert witnesses, five members of MNCPPC staff, three community members in support of the applications, ten community members opposed to the applications, one expert witness for the opposition and the People’s Counsel. The extensive record developed in this case demonstrates that the proposed rezonings and development would satisfy the purposes and standards of the zone requested (PD-2), would be compatible with existing and planned land uses in the surrounding area and would serve the public interest. The development proposed here is substantially in compliance with detailed recommendations for the subject property in the *1997 Approved and Adopted Fairland Master Plan*. It would replace an outdated, inadequate golf course with a more attractive, more environmentally

sensitive golf course and would provide needed balance in the area's housing mix by creating a large development of predominantly single-family detached homes. It would provide land for an elementary school site within walking distance of many existing residences as well as many of the proposed homes. In addition, it would facilitate the reparation of environmental degradation caused by past activities on the privately-owned portion of the site. The resulting environmental benefits would outweigh the environmental harm caused by unavoidable forest clearing and stream buffer encroachments. Accordingly, the Hearing Examiner recommends approval of the requested reclassifications and of the Development Plan.

II. STATEMENT OF THE CASE

Local Map Amendment Applications No. G-813 and G-814, filed on August 29, 2003 by Applicants Artery/Ryland, LLC ("Artery") and the Maryland-National Capital Park and Planning Commission ("MNCPPC"), request reclassification from the R-200 and RE-2 Zones (both residential, one-family) to the PD-2 Zone (Planned Development) of a total of 313.94 acres of land along the border between Montgomery County and Prince George's County, south of MD 198 and east and north of Greencastle Road in the 5th Election District. LMA G-813 requests rezoning from the R-200 and RE-2 Zones of 295.94 acres of land located southwest of the PEPCO property that bisects the subject property. LMA G-814 requests rezoning from the R-200 Zone of 18 acres of land located northeast of the PEPCO property. Individual parcel numbers included in these applications are identified on the submitted Identification Plats, Exhibit 36(b) in LMA No. G-813 and Exhibit 4 in LMA No. G-814.

The applications were initially reviewed by Technical Staff of the MNCPPC who, in a report dated October 23, 2003 and revised October 29, 2003, recommended approval. The entire Montgomery County Planning Board ("Planning Board") considered the applications on October 30, 2003 and voted unanimously to recommend approval. A public hearing was conducted on November 17, 18, 19 and 21, 2003 at which testimony and evidence were presented in support of and in opposition to the applications. The record was held open to accept post-hearing submissions by the Applicants and closed on December 11, 2003. By Resolution dated February 10, 2004, *nunc pro tunc*

as of January 26, 2004, the District Council extended the time for submission of the Hearing Examiner's Report and Recommendation to February 11, 2004. Exhibits accepted at the hearing were placed in the file for Case G-813 and incorporated by reference in the file for Case G-814. All exhibit references are to exhibits in Case G-813 unless specified otherwise.

III. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Where there are conflicts in the evidence, these conflicts are resolved under the preponderance of the evidence test.

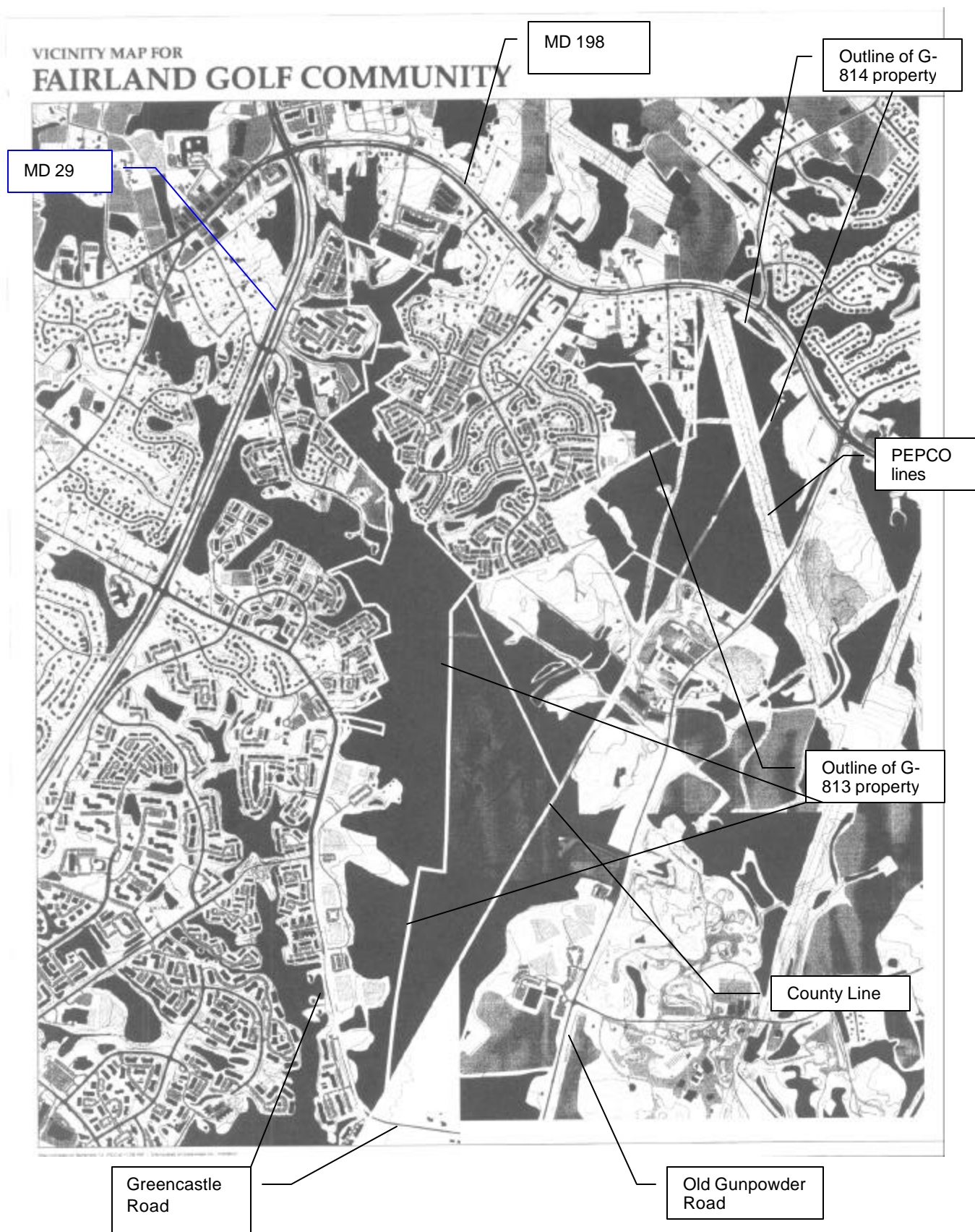
A. Subject Property

The subject property stretches along the county line from MD 198 in the north to Greencastle Road in the south, with an irregular shape and varying width. The property has approximately 1,370 feet of frontage on MD 198, widens to approximately 2,500 feet in width adjacent to the Saddle Creek neighborhood to the west, then narrows down to a single point less than an inch wide at its southern end, about 400 feet north of Greencastle Road. The property is bisected near its northern end by PEPCO transmission lines. The subject property's shape and relationship to surrounding land uses are shown on the map on the following page.

The portion of the subject property northeast of the PEPCO transmission lines, which is the subject of Case No. G-814, contains 18 acres of land and is roughly triangular, bounded by MD 198 to the north, the county line to the east/southeast and the PEPCO power lines to the west. This tract has approximately 1,270 feet of frontage on MD 198 and 1,875 feet of frontage along the PEPCO power line. It is undeveloped, with woods on the majority of the tract and wetlands on much of the southern two-thirds of the parcel, and is classified under the R-200 Zone. Abutting to the east, in Prince George's County, is a restaurant known as Tubby's Diner, and beyond that are industrial uses and storage lots extending all the way to Old Gunpowder Road.

The portion of the subject property southwest of the PEPCO transmission lines is the subject of Case No. G-813 and contains the bulk of the property, 295.94 acres of land. It has

Vicinity Map, Excerpted from Ex. 48



approximately 100 feet of frontage on MD 198 to the north, and is bounded by the PEPCO power lines to the east. A stream described as the McKnew Tributary to the Little Paint Branch runs through the G-813 property, parallel to the county line.

Roughly the southern half of the G-813 property, classified under the RE-2 Zone, is in public ownership as part of Fairland Recreational Park ("Fairland Park"). The northern portion of this publicly owned land houses the Gunpowder Golf Course, which was built by a private entity some 50 or 60 years ago on land previously used for sand and gravel mining. The course was purchased by the MNCPPC in 1991 but continues to be operated privately under a lease agreement. It has not been adequately maintained from an environmental standpoint. The course has dirt golf cart paths on steep slopes that allow sediment to wash directly into the McKnew Tributary. In addition, the majority of the fairways lack adequate cover to properly stabilize the sediment, allowing additional sediment to reach the stream. The effects of this sedimentation are visible in three very cloudy instream ponds on the course. To the west, the golf course abuts a wooded, steeply sloped area of Fairland Park that contains a stream known as the Silverwood Tributary to the Little Paint Branch. The Silverwood and McKnew tributaries converge on the property of the existing golf course and flow south to join the Little Paint Branch main stem. To the east, Gunpowder Golf Course extends across the county line and is accessed via Old Gunpowder Road, in Prince George's County.

South of the existing golf course is an area of Fairland Park that has been referred to in this case as the "southern spike" because it is roughly triangular and ends in a sharp point. The southern spike is a forested area with a stream running through it – the continuation of the combined Silverwood and McKnew tributaries that converge slightly to the north on the existing golf course. Much of this area contains high quality, hardwood forest. The southern spike is developed with a paved trail that bridges the stream, one natural-surface trail that has been formally approved and a number of informal trails that park users have created by persistent use. These trails are part of a network of trails extending through Fairland Park and connecting with Fairland Regional Park in Prince George's County. To the west, the southern spike abuts forested portions of Fairland Park, which in turn abut active recreation areas of the park (ball fields, tennis courts and basketball courts) along Greencastle

Road. To the east, the southern spike abuts active recreation areas of Fairland Regional Park in Prince George's County, including ball fields, batting cages, a six-court tennis bubble, outdoor tennis courts, an indoor ice hockey rink and an aquatics center, all of which are accessed from Old Gunpowder Road.

The G-813 property located north of Gunpowder Golf Course is classified under the R-200 Zone, and nearly all of it is privately owned. (The MNCPPC owns one small parcel.) An 18.6-acre portion of this area, known as "Parcel X" or the "stump dump," was used as a landfill for many years. One witness stated that it is probably as severely degraded as any site he has worked on in 25 years doing land development in Montgomery County. See Tr. Nov. 19 at 190. The landfill does not have adequate sediment and erosion controls, allowing untreated, sediment-laden runoff to discharge directly into the McKnew Tributary. In addition, appropriate vegetated stream valley buffers have not been maintained in many areas. The owner, Earl Center, has entered into a consent decree with the Maryland Department of the Environment that requires him to seal the landfill and install a five-foot cap of clean fill.

A large portion of the privately owned property, approximately 47 acres located mostly between the existing golf course and Parcel X, is comprised of un-reclaimed, abandoned sand and gravel mines. These areas are another significant source of sediment in the watershed, as exposed, highly erodible slopes carry sediment to the stream in many areas. Several of the stream valleys bordering mining sites have also been subjected to excessive trash dumping, further degrading the water and habitat quality of the stream systems. Just south of Parcel X is a large in-stream pond, formerly used as a sand and gravel wash. To the west, Parcel X and the mined areas abut residential subdivisions in Montgomery County, McKnew Local Park and a forested area north of the local park. To the east, Parcel X and a small portion of the mined areas abut a cluster of industrial uses in Prince George's County. These industrial uses contribute to the degradation of the McKnew Tributary because of a lack of stormwater management controls. In addition, large portions of the stream buffer located along the industrial park are degraded by discarded trash and the lack of a vegetated stream buffer. The bulk of the mined areas abut undeveloped land to the east, in Prince George's County, that

is planned for residential development as part of the larger golf course community of which these zoning applications are a part.

The northernmost part of the G-813 property consists primarily of open space, with a large area of high priority forest surrounding the McKnew Tributary as it enters the subject property, which is connected with a larger forested area to the northwest, near McKnew Local Park. In addition to the environmental degradation caused by the landfill and mining activities, the subject property is disturbed by all terrain vehicles (ATVs) that ride through the old mining sites, sending sediment into the stream, and through high priority forests near the Silverwood and McKnew Tributaries, where they destabilize soils and promote erosion. ATVs also drive through the streams, decreasing stream bank stability and impairing habitat for aquatic organisms.

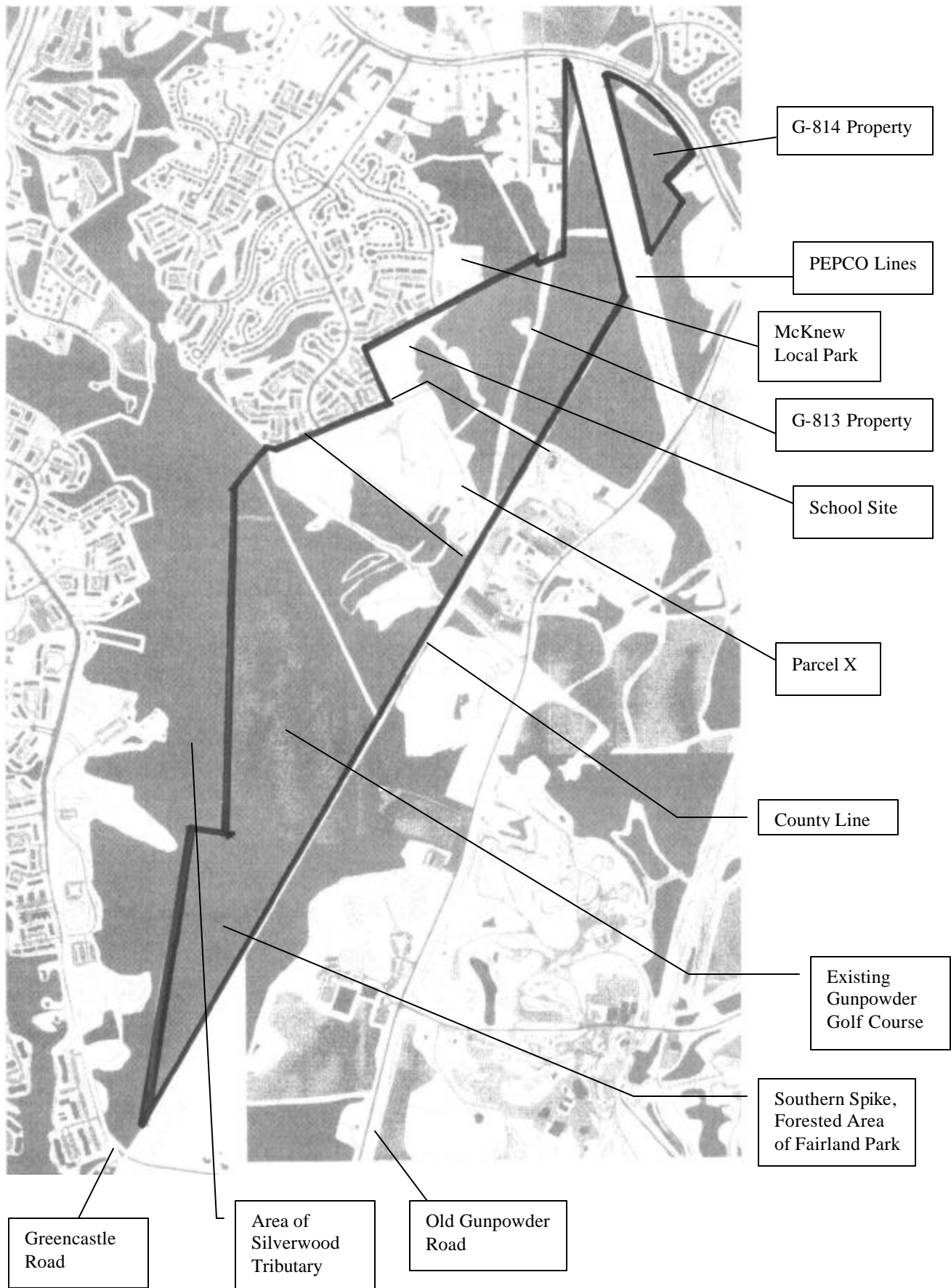
The subject property contains approximately 182 acres of forest and 104 acres of stream buffer, creating significant environmental constraints on development. A geotechnical feasibility study that involved approximately 40 soil borings concluded that subsurface conditions are very favorable for development of the type proposed. See Ex. 33(r), Tr. Nov. 19 at 111-115. Additional studies would be needed to determine how to handle construction on Parcel X, but the Applicants' geotechnical engineer testified that with standard practices – such as removing and replacing contaminated fill – Parcel X can be used for residential building. Tr. Nov. 19 at 116-118.

The map on the following page, a detail from the vicinity map provided above, identifies some of the areas described above.

B. Surrounding Area

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

Subject Property, Excerpted from Ex. 48



In the present case, both Technical Staff and the Applicants' land planner defined the surrounding area as the area referred to in the *1997 Approved and Adopted Fairland Master Plan* as the "Oakfair/Saddle Creek" community, which extends from MD 198 on the north to and including Fairland Park to the south, and from the County line on the east to the Silverwood Tributary on the west. See Master Plan at 33. Technical Staff testified that the Master Plan divided the planning area into communities by making logical divisions, grouping together areas that are geographically close and use shared neighborhood roads. Tr. Nov. 21 at 162. The Hearing Examiner accepts the surrounding area designation proposed by Technical Staff. The subject property constitutes about half of the land area within the surrounding area as defined. The remainder of the surrounding area contains a mix of residential uses in the R-200 and R-200/TDR Zones, parkland and a church.

C. Zoning History

The subject property was classified under the R-A Zone (now RE-2, two-acre single-family) in the 1958 Countywide Comprehensive Zoning. In 1982, Sectional Map Amendment ("SMA") G-337 reclassified the majority of the subject property to the R-200 Zone, retaining the RE-2 designation for the easternmost portion adjacent to Prince George's County. In 1987, SMA G563 reclassified a portion of the property to the R-200/TDR Zone. In 1997, following the adoption of the Master Plan, the R-200/TDR portion of the subject property was reclassified under the R-200 Zone, and the RE-2 portion of the privately owned land was reclassified under the R-200 Zone.¹

Portions of the subject property have been the subject of three unsuccessful zoning applications. In 1964, LMA F-932, seeking rezoning from RE-2 to the I-2 Zone, was withdrawn without prejudice. In 1989, LMA G-610, seeking rezoning from R-200/TDR and RE-2 to the I-1 Zone, was withdrawn without prejudice. In 1991, LMA G-657, seeking rezoning from R-200/TDR and RE-2 to the I-4 Zone, was denied by the District Council.

¹ The Staff Report states that all of the RE-2 property was reclassified to the R-200 Zone in 1997, but both the supporting memorandum from Community Based Planning and the current zoning map [Ex. 36(c)] indicate that the publicly-owned portions remain classified under the RE-2 Zone.

D. Proposed Development

The Applicants seek to develop the subject property with an 18-hole golf course, 346 single-family detached dwellings and 50 single-family attached dwellings that would qualify as Moderately Price Dwelling Units (“MPDUs”). Approximately 11 acres of land at the western edge of the subject property, adjacent to the existing Saddle Creek neighborhood, would be reserved as the site for a new elementary school. The only road constructed through the site would be an extension of Cedar Tree Drive from its current terminus at the western edge of the subject property to Old Gunpowder Road in Prince George’s County. On-site recreational facilities would include a community building, an outdoor playground, a pool, tennis courts and tot lots.

The residential development would be divided into five fairly distinct neighborhoods of varying sizes, three of which would include MPDUs. The Land Use Plan specifies that the final number of single-family lots in each residential pod may change during preliminary plan and site plan review, so the numbers are approximate. The general layout of the residential neighborhoods, however, is a binding element of the Land Use Plan, so any changes made in the distribution of the units would be modest. Moreover, distribution of the MPDUs throughout the site is an element of Master Plan compliance (see Part III. G. below), so any changes made at a later stage would have to be very minor.

The only development proposed for the G-814 property would be five single-family homes, to be used initially as model homes. Neighborhood “A” as described by the Applicants’ land planner would include the five homes on the G-814 property plus the northernmost residential area on the G-813 property, consisting of approximately 96 single-family detached homes and eight MPDUs. The MPDUs in Area A would be built in the form of duplex units with the exterior appearance of a large, single-family detached dwelling. This neighborhood would be accessed from MD 198.

Neighborhood B would consist of the homes just south of the elementary school site that front on Cedar Tree Drive and on a side street leading to the school site, with approximately 33 single-family detached homes and eight duplex units. Like the duplexes in Neighborhood A, these units would be built in the form of two attached units with the appearance of a large, single-family detached dwelling, indistinguishable from neighboring single-family detached homes. Cedar Tree Drive is an

existing road that would be extended, under the proposed plan, to cross through the new development and intersect with Old Gunpowder Road in Prince George's County.

Neighborhood C would be a large residential enclave served by a long cul de sac south of Cedar Tree Drive. This neighborhood would have approximately 134 single-family detached homes. Neighborhood D would be a small group of approximately 31 single-family detached residences on the county line, bridging the extension of Cedar Tree Drive.

Neighborhood E would be the southernmost residential area, with approximately 81 dwelling units, including 34 town house MPDUs. The other 47 units would be "villas," narrow detached units that are deeper than they are wide, on small lots that create a more urban setting. Neighborhood E would have the most urban environment, with an interconnected street pattern, houses close to the street and on-street parking. The on-site community recreation area would be located in close proximity to Neighborhood E to give residents in an urbanized neighborhood, without large yards, the benefit of having common open space nearby.

The golf course would be spread out in the open areas between the five residential neighborhoods, and on abutting property in Prince George's County. The golf course plan was developed by Joseph Hills of Maryland Land Development, in association with his father, Arthur Hills, who was described as one of the leading golf course architects in the world. Arthur Hills was a pioneer in creating environmentally sensitive golf courses. Joseph Hills testified that one of the chief design concerns at the subject property has been taking greatest possible advantage of the property's environmental features, which he has done by locating the entrance drive where it would have a lovely view, locating golf holes with a view of the stream, and routing one golf hole (number 10, in Prince George's County) down into a sand and gravel mine area, which is a very exciting feature for golfers. He described the mine pit hole as something that would put a unique stamp on the course and draw people to it. He also testified that the golf course layout endeavors to minimize grading by laying the golf holes into the topography as much as possible.

The entrance to the golf course, the driving range and two holes would be located in Prince George's County. A representative of Artery testified that the Prince George's County Council

has granted preliminary subdivision approval for 120 homes in the Prince George's County portion of the project.² Tr. Nov. 17 at 151.

An area near the entrance to the course and the driving range would be designated for use by "First Tee," a non-profit organization that provides access to golf for young people who would not otherwise have the opportunity. The organization uses golf as a means of teaching life skills, serving primarily low-income children. They currently operate at two locations in Montgomery County, serving about 100 children. Having a dedicated space at the golf course proposed here, planned to suit their needs, would be a unique opportunity for First Tee. They would use this space to let young people receive instruction and practice their swings until they are ready to head out onto the golf course with a volunteer mentor. The representative of First Tee who testified acknowledged that Gunpowder Golf Course has been receptive to hosting a First Tee program, but First Tee did not have the money to expand. He also testified that Gunpowder Golf Course currently allows members of the Boys and Girls Club to play a nine-hole round of golf free.

E. Development Plan and Binding Elements

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan, and the Land Use Plan that constitutes one of its primary elements, are binding on the Applicants except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board, and minor changes may be

² The subdivision proposal was described as part of a larger plan for a golf course community, and final site plan approval is contingent on the presentation of a lease agreement that includes all the details concerning the golf course such as management, lease structure, etc. Tr. Nov. 17 at 151. Final approval of the subdivision cannot be given until completion of the final lease and golf course documents.

made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

The present applications have complied with each of the requirements for a Development Plan through a single set of documents covering the entire subject property, including both the G-813 property and the G-814 property. The principal component of the Development Plan is the Land Use Plan, Exhibit 95(a), which is reproduced on page 17. The site data table that appears on the Land Use Plan is reproduced on page 18. Additional components of the Development Plan include the NRI/FSD, vicinity maps (e.g. Exs. 12, 48 and 50) and a phasing plan (Ex. 95(b)).

In this case, the Applicants have specified several elements of the Land Use Plan that are illustrative. The following excerpts establish that the many of the details shown on the Land Use Plan are illustrative, including the golf course layout.

Excerpts from Land Use Plan General Notes and Written Binding Elements

Illustrative Items Described in General Notes

10. Proposed stormwater management facilities are subject to modification during final engineering review and approval.
11. The extent and configuration of the golf course fairways and tees are illustrative. The final limits of clearing and grading for the golf course fairways and tees and final limits of forest retention areas will be established at time of site plan and will be shown on the approved Final Forest Conservation Plan. A preliminary Forest Conservation Plan has been submitted as part of the Development Plan as Exhibit 33(d) in G-813 and 29(d) in G-814.
12. Land used for stormwater management facilities may be publicly or privately owned, and may be publicly or privately maintained as determined at site plan review.
13. The final number of single-family lots in each residential pod may vary at time of preliminary plan and site plan approvals.

Illustrative Item Described in Written Binding Elements

3. The trails shown on this plan are illustrative only. The trail system and location of golf cart paths will be established during site plan review.

As stated in the Applicants' Land Planning Report for G-813, all of the elements are shown on the Land Use Plan, even if they are not binding, "to illustrate that the golf course and housing can be designed in a manner that is environmentally sensitive, and provides open space, stream valley parkland, and a trail system" Ex. 33(a) at 7.

Visual elements of the Land Use Plan that can be considered binding include the general locations of residential pods, the general location of the extension of Cedar Tree Drive, the location of the school site and the general location of on-site recreational amenities. The Land Use Plan specifies additional binding elements in written form for both G-813 and G-814, which are set forth in full below. These elements are captioned "Proposed Binding Elements" on the final Land Use Plan submitted. If the applications are granted, it would be appropriate for the final Land Use Plan submitted for certification to label these sections as "Written Binding Elements" rather than "Proposed."

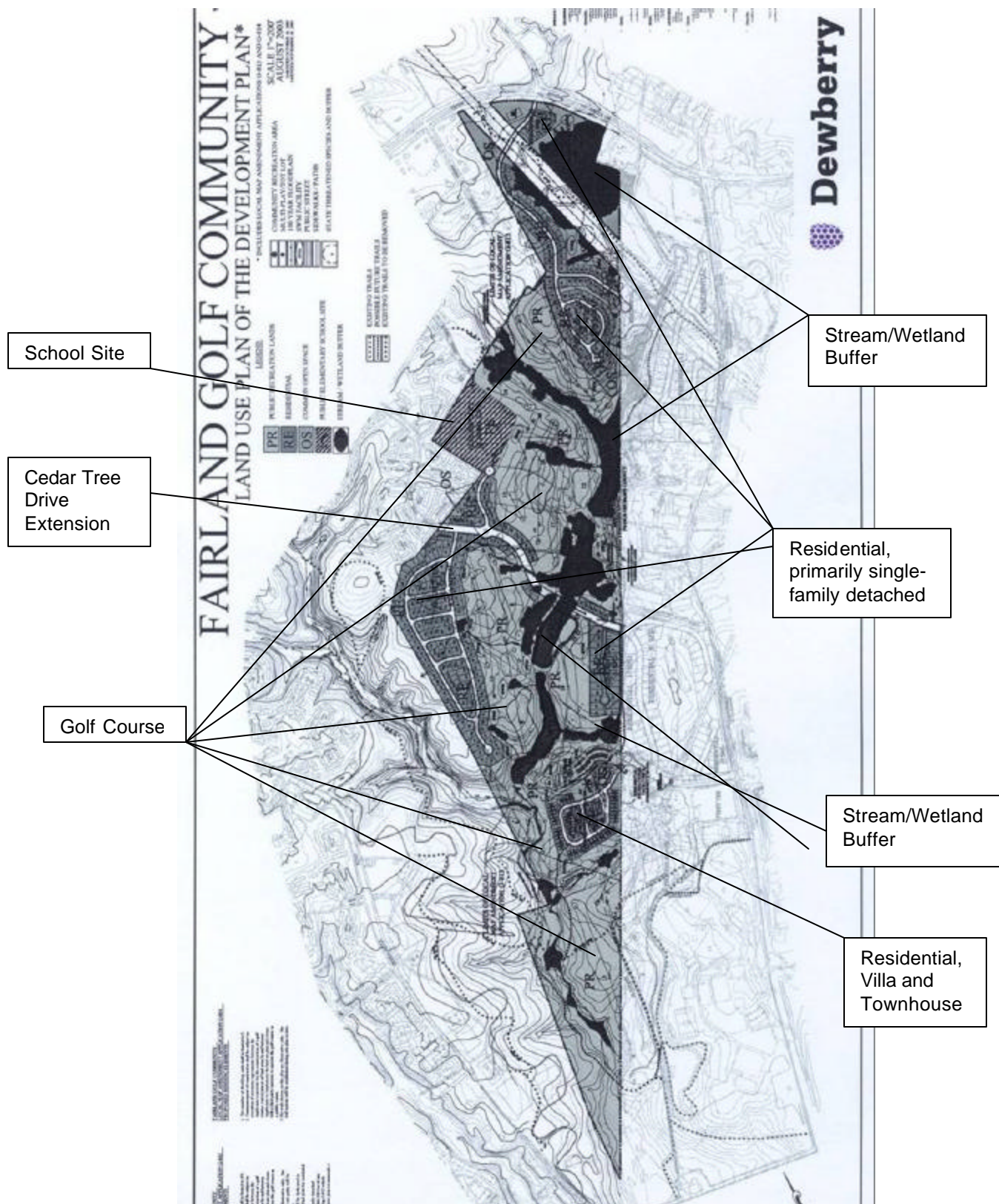
Written Binding Elements for G-813

1. The number of dwelling units shall be limited to 391.
2. Commencement of construction shall be subject to execution of necessary agreements between the Applicants to provide for the construction of a golf course, conveyances of land areas by and between Applicants to implement the land use plan, and a lease with a third party operator to operate the golf course as a public course.
3. The trails shown on this plan are illustrative only. The trail system and location of golf cart paths will be established during site plan review.
4. The Elementary School site shall be dedicated to public use prior to recordation of final plats for residential lots in Phase II.
5. No building other than a single-family detached residence shall be constructed within 100 feet of any boundary of the Property comprising G-813 which adjoins land for which the area master plan recommends a one-family detached zone.

Written Binding Elements for G-814

1. The number of dwelling units shall be limited to 5.
2. Commencement of construction shall be subject to execution of necessary agreements between the Applicants to provide for the construction of a golf course, conveyances of land areas by and between Applicants to implement the land use plan, and a lease with a third party operator to operate the golf course as a public course.
3. The trails shown on this plan are illustrative only. The trail system will be established during site plan review.

Land Use Plan of the Development Plan, Exhibit 95(a)



Site Data Table, Excerpted from Land Use Plan, Ex. 95(a)

SITE DATA TABLE FOR LOCAL MAP AMENDMENT I AND II

1. Unit Classification

	<u>Preliminary Classification of Number of Bedrooms</u>
Local Map Amendment I	
341 Single Family Detached Units	Four to Five
50 Single Family Attached Units	Two to Four
Local Map Amendment II	
5 Single Family Detached Units	Four to Five

2. Housing Mix

	<u>Minimum Required</u>	<u>Provided</u>
Local Map Amendment I		
Single Family Detached Units	30% / 118 D.U.	87% / 341 D.U.
Single Family Attached Units	20% / 79 D.U.	13% / 50 D.U.*
*Pursuant to footnote 1, Section 59-C-7.131, the Applicants have requested a waiver of this requirement.		
Local Map Amendment II		
Single Family Detached Units	30% / 2 D.U.	100% / 5 D.U.
Single Family Attached Units	20% / 1 D.U.	0% / 0 D.U.*
*Pursuant to footnote 1, Section 59-C-7.131, the Applicants have requested a waiver of this requirement.		

3. Density

	<u>Maximum Permitted in PD-2 Zone*</u>	<u>Provided**</u>
Local Map Amendment I	2 D.U. / Acre	1.32 D.U. / Acre
Local Map Amendment II	2 D.U. / Acre	(391 D.U. / 295.94 Acres) .27 D.U. / Acre (5 D.U. / 18 Acres)

*Pursuant to Section 59-C-7.14, density may be increased to add MPDU bonus.
** Includes MPDUs.

4. MPDU's

	<u>Minimum Required</u>	<u>Provided</u>
Local Map Amendment I	12.5% / 49 D.U.	50 D.U.*
Local Map Amendment II	Under 38 D.U. = 0 MPDU's	—
*The Applicants have provided 50 MPDU's, which would be required of the 396 dwelling units proposed in Local Map Amendments I and II, if the Applications were considered together.		

5. Land Devoted To Public Use

	<u>Local Map Amendment I</u>	<u>Local Map Amendment II</u>	<u>Total</u>
Roads	13.71 Acres	0.37 Acres	14.08 Acres
Golf Course	166.71 Acres	0 Acres	166.71 Acres
Public Park Land	27.11 Acres	0 Acres	27.11 Acres
School Site	11.13 Acres	0 Acres	11.13 Acres

6. Parking

	<u>Minimum Required</u>	<u>Provided</u>
Local Map Amendment I		
Public Golf Course & Clubhouse	Not Specified	180 Spaces
Community Recreation		
Clubhouse,		
Swimming/Wading		
Pool, Tennis Courts		
Total	Not Specified	54 Spaces
Residential		
50 Single Family Attached	100 (2 Spaces / D.U.)	50 Garage 50 Tandem 27 Surface 127 Total Spaces
341 Single Family Detached	682 (2 Spaces / D.U.)	682 Garage 682 Tandem 1364 Total Spaces
Local Map Amendment II		
5 Single Family Detached	10 (2 Spaces / D.U.)	10 Garage 10 Tandem 20 Total Spaces

7. Green Area

	<u>Minimum Required</u>	<u>Provided</u>
Local Map Amendment I	30% (89.29 Acres)	
		Site Area
		295.94 Acres
		Less Roads
		13.71 Acres
		Less Buildings
		18.00 Acres
		Less Parking
		2.89 Acres
		Less School
		3.34 Acres*
		Green Area
		258.00 Acres
*Assume 30% Green Area on School Site		
		87.18%
Local Map Amendment II	30% (5.4 Acres)	
		Site Area
		18 Acres
		Less Roads
		0.37 Acres
		Less Buildings
		0.26 Acres
		Green Area
		17.35 Acres
		86.38%

F. Private/Public Land Exchanges

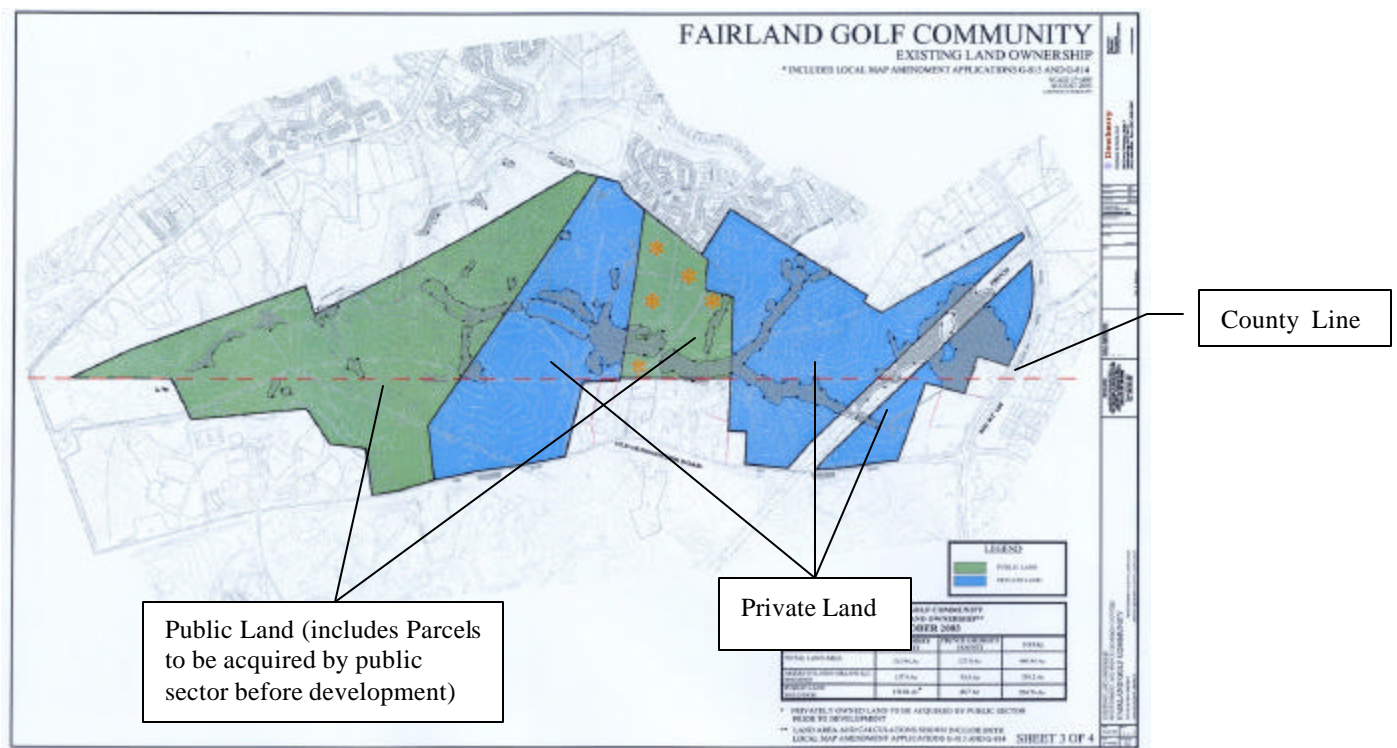
Development of the subject property as a whole requires a high degree of public/private cooperation because of the split in property ownership. About half of the subject property is owned by Montgomery County and managed by the MNCPPC. The remainder is in private ownership.³ Carrying out the proposed development would require exchanging some of the public land for private, so that ultimately the County holds title to all parkland, including the land on which the new golf course is built, and Artery holds title to the land on which homes are built. If the reclassifications are approved and the project moves forward to construction, the private developers will bear the cost of developing and constructing the golf course, and any land underlying the course that is not currently owned by Montgomery County will be conveyed to the County. Similarly, any land underlying proposed residential lots that is not already under contract to Artery will be conveyed to Artery. The maps on the next page show the current breakdown between publicly and privately owned land and the breakdown anticipated after the proposed land exchanges are completed.

William Gries, Land Acquisition Specialist for the MNCPPC, testified that the subject property comprises 313.95 acres, of which approximately 158 acres are in private ownership and 156 acres are owned by Montgomery County. Under the proposed Development Plan, 39.53 acres of publicly owned land that is included in the subject property would be converted to private ownership, and 86.68 acres of privately owned land would be converted to public ownership. Tr. Nov. 17 at 198. Thus, Montgomery County would have a net gain of 47.15 acres of land. *Id.* at 199. He noted that 11.31 acres of the land in public ownership after development would be used for an elementary school site and the rest would be parkland. This would result in a net gain in parkland of 36.2 acres.

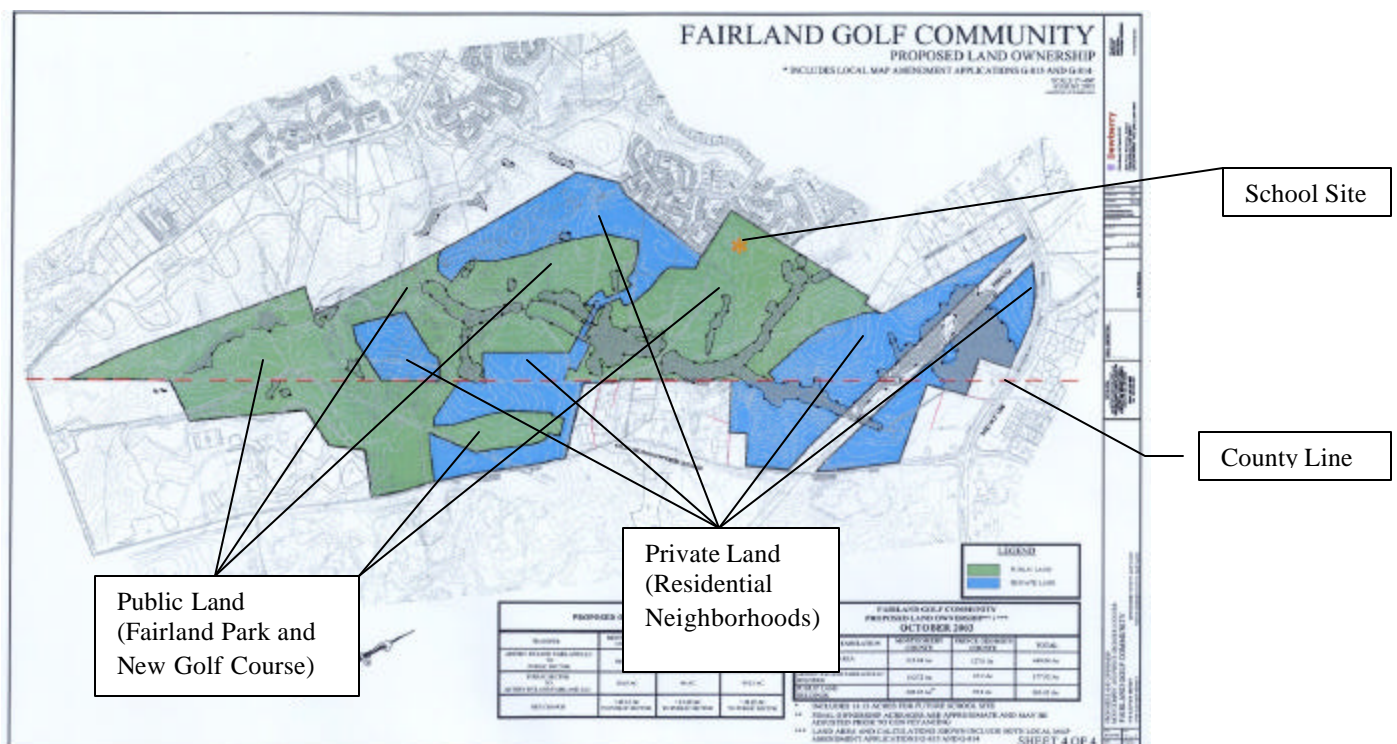
Opposition witnesses contend that the proposed land exchanges will not be able to take place because some of the public property involved was purchased with funding from the State of

³ Most of the privately owned land is owned by or under contract to Artery. Two private individuals own parcels that are part of or adjacent to Parcel X. Each of these individuals has submitted a letter into the record authorizing the MNCPPC to seek the subject rezoning as to their land. See Exs. 15 and 16. The record also contains a letter from the County's Chief Administrative Officer authorizing the MNCPPC to seek rezoning of County-owned portions of the subject property to the PD-2 Zone as part of a golf course community. See Ex. 14.

Existing Land Ownership, Ex. 95(c)



Proposed Land Ownership, Ex. 95(b)



Maryland's "Program Open Space", which requires the land to be used as open space.⁴ They raised a concern that valuable public land would be exchanged for privately-owned land of lesser value, which is either severely degraded and in need of restoration or undevelopable for environmental reasons. They maintain, moreover, that the present rezoning applications should not have been permitted to proceed without the participation of the State of Maryland, because property purchased with Program Open Space funds cannot be the subject of a land exchange without state approval.

The Applicants confirm that two parcels of land that are part of the existing golf course were purchased by Montgomery County with Program Open Space funds. Tr. Nov. 17 at 205. Mr. Gries (MNCPPC Land Acquisition Specialist) testified that under state law, those parcels cannot be converted to any use other than outdoor, public, recreational open space without written approval from three state agencies. *Id.* at 204; see also Maryland Code Natural Resources Article, §5-906, provided in Exhibit 59. That approval requires that the land be replaced by land of at least equivalent size, with at least equal recreation and open space value and at least equal monetary value. Mr. Gries testified that he has succeeded in obtaining the approvals necessary to convert property purchased with Program Open Space funds to other uses on two occasions, both in 1998. *Id.* at 208-210. He opined that in this case, all three of the required findings would be made and the approvals obtained. The County would receive greater acreage in the exchange than it would give up; it would exchange land currently developed as a golf course for land the sellers would be required to develop as a golf course, demonstrating at least equal recreational value; and the assessed value of the land the County receives would be greater than the value of the land it conveys. *Id.* at 206-208.

Mr. Gries also testified that county procedures for the disposal of publicly owned land require a public hearing, offering the opportunity for public comment, with a finding by the hearing examiner that the proposed use of the land is in the public interest. *Id.* at 201. In addition, the evidence established that the current owner of Parcel X is responsible for capping the landfill, and that Artery would bear the cost of any additional clean-up on Parcel X and of the environmental restoration

⁴ This point was also raised by counsel for a community member who appeared briefly at the first day of hearing.

needed on former mining sites that would ultimately be exchanged for public property. See Tr. Nov. 17 at 169-170.

G. Master Plan

The subject property falls within the area covered by the *1997 Approved and Adopted Fairland Master Plan* (the “Master Plan”). The Master Plan divided the planning area into geographically defined communities. As stated by Technical Staff, “the primary goal of the Master Plan was community building and recognizing and reinforcing each community’s unique character and identity.” Memorandum from Piera Weiss of Community-Based Planning, dated October 28, 2003, attached to Staff Report, Ex. 41 (“Master Plan Memo”) at 1. For each community, the Master Plan described housing types, local facilities, known problems or issues, what types of new development were appropriate and what public facilities were needed. *Id.*

A secondary goal was providing more housing options, and in particular increasing the number of new single-family detached homes where the existing housing mix favored attached or apartment units. *Id.* The Master Plan recommended rezoning or optional methods of development for specific properties to balance the overall mix of units within a community. *Id.*

The subject property corresponds very closely to Area 2 of the Oakfair/Saddle Creek Community defined in the Master Plan, which was described, in relevant part, as follows:

Much of this area was built in the 1980s and encompasses about 1200 homes. . . . There are 800 townhouses and over 400 detached homes. The average density is six units to the acre. . . .

Problems in the area include the lack of pedestrian connections from this neighborhood to the Fairland Recreational Park . . . Three public streets stub at the 200-acre tract of vacant land [the subject property] and there are concerns regarding the extension of these roads and the ability of the road system to accommodate additional units. . . .

Area 2, is located between the residential development and the County line. Prior to the 1980s much of this acreage was used for sand and gravel excavation. There are forested areas, steep slopes and wetlands associated with the upper reaches of the Little Paint Branch. A series of ponds remain from earlier uses. Area 2 has the potential for adding detached units to the housing mix; expanding or reconfiguring the Gunpowder Golf Course, as proposed by one of the land owners; improving the road network including a possible extension of roads to Old Gunpowder Road in Prince George’s County; and

hiker/biker access to the Fairland Recreational Park. The Planning Staff for the Montgomery County Public Schools has recommended that a school site be included in Area 2 for two reasons: the number of households that could be served (approximately 1,500) and the potential for children to walk to school. A school would provide a centrally located community focal point.

Master Plan at 47.

The Master Plan stated that the subject property, if combined with the adjoining public Gunpowder Golf Course, would be suitable for redevelopment as a golf course community with a public golf course and private community. See Master Plan Memo at 2. The Master Plan included the following specific recommendations:

Encourage use of the Planned Development (PD) zone to achieve the appropriate mix and size of units, an improved golf course design located outside the stream valley, and protection of other environmental features such as steep slopes and wooded areas. The PD will permit a greater level of scrutiny throughout the development process and will promote compatibility between the golf course community and the existing community that will share a street network and elementary school.

Encourage a public/private partnership between Montgomery and Prince George's County MNCPPC Parks Departments and the property owners to develop a golf course community. This would entail upgrading and expanding the existing public golf course and developing a residential community around the links.

Master Plan at 47.

The Master Plan stated that the golf course community could be accomplished best under the PD Zone, and listed several elements to be evaluated at the time of a zoning request for the PD Zone (Master Plan at 48):

- A density cap of 510 units overall, with 396 units in Montgomery County and an appropriate mix of housing types including single-family detached homes and attached units;
- MDPU's to be distributed throughout the development;
- Extension of the existing road network (see . . . page 93) ;
- Areas of no disturbance or environmental impact (see page 119);
- Non-vehicular access to Fairland Recreational Park;
- Connect road(s) to Old Gunpowder Road in Prince George's County, if desirable;

- Common open space for residents of the new community; and
- A 12-15 acre site for a public elementary school.

The transportation section specified that Cedar Tree Drive should be extended to Old Gunpowder Road to provide access for the new community and the golf course, and an alternative access point for existing neighborhoods that are currently served only by MD 198. Master Plan at 94. The Master Plan recommends bikeways and sidewalks to connect the new community to existing communities along McKnew Road and to Old Gunpowder Road. See Master Plan Memo at 3.

Parkland recommendations describe the portion of the subject property roughly between the PEPCO lines and Fairland Park as follows (Master Plan at 119):

The stream valley between McKnew Local Park and Fairland Recreational Park . . . contains a very diverse and unusual plant community. Although much of the area has been disturbed by quarrying, the remaining vegetation and the potential for re-vegetation make this stream valley worthy of protection as parkland. (See also golf course community, page 47).

The Master Plan recommended cluster development in the part of the stream valley north of Parcel X, “to protect stream buffer areas and high quality forest stand between the stream and Colonial Gas Pipeline right-of-way.” *Id.* at 140.⁵

Opposition witnesses in this case attempted to argue that while the Master Plan recommended development of a golf course community on the subject property through a private/public partnership, it did not specify that the golf course should go beyond the borders of the existing Gunpowder Golf Course, nor did it specify that public and private land should be exchanged to carry out such a development. See, e.g., Tr. Nov. 17 at 123. Several of the Applicants’ witnesses who were involved in the Master Plan process testified that the basic elements of private/public land swaps and a new golf course on a new campus were established as far back as 1995 or 1996, while the Master Plan was being drafted. See Tr. Nov. 18 at 21, 33-34; Tr. Nov. 17 at 220, 223-24. Moreover, the Master Plan includes not one, but two illustrations that clearly indicate an expectation that the new golf course would extend well beyond the borders of the existing Gunpowder Golf Course onto privately owned

⁵ The Master Plan refers to the Konterra property, which is shown on the identification plat, Exhibit 36(b), as the parcels between the PEPCO lines and Parcel X.

land, and that residential lots would be created on publicly owned land. See illustration of Golf Course Community on page xv; Parkland Plan showing Proposed Improvement to Gunpowder Golf Course on page 118. Carrying out the type of development shown on these illustrations would unavoidably involve exchanges of private and public property.

One opposition witness argued that locating part of the proposed golf course in the southern spike would violate the Master Plan because the only map in the Master Plan that showed a golf course suggested that the golf course would expand to the north, not into the park. Tr. Nov. 17 at 84-85. In response, Ms. Weiss (MNCPPC Staff) identified a conceptual illustration in the Master Plan that showed at least two residential areas on property occupied by the Gunpowder Golf Course and a golf hole in the southern spike. Tr. Nov. 21 at 143-145; Master Plan at xv.

The Planning Board and Technical Staff found that the proposed reclassification and development of the subject property would be consistent with the goals and objectives of the Master Plan. See Ex. 42; Ex. 41 at 13. Technical Staff specifically reviewed each of the elements that the Master Plan recommended be evaluated at the time of a rezoning application (See Master Plan Memo at 5-7):

- The Development Plan provides for the number of units the Master Plan set as a maximum for the subject property, 396 units. It provides an appropriate mix of unit types, in light of the Master Plan emphasis on obtaining as many single-family detached units as possible: 87% single-family detached dwellings and 13% single-family attached. Unit types include detached dwellings with three different lot sizes, duplexes and townhouses.
- MPDUs would be distributed among three of the five residential pods, in a total of four locations.
- The proposed road network would extend the existing road network and provide access to the proposed school site.

- As discussed further below, the environmental benefits provided by the Development Plan outweigh the environmental costs and preserve adequate areas of no environmental impact.
- The Development Plan proposes sidewalks along all public streets and a trail system, linked to existing trails, which would provide access to Fairland Park.
- Cedar Tree Road would be connected to Old Gunpowder Road in Prince George's County.
- Community open space for residents of the proposed community would include a tennis court, a swimming pool, tot lots and a trail system.
- The Development Plan provides a school site that would be centrally located to serve both the new community and the existing Saddle Creek community to the west. Staff of Montgomery County Public Schools has indicated that the size of the dedication and the access are adequate for the proposed elementary school.

Several witnesses testified that the proposed development would implement the Master Plan better than development under the existing zoning. The privately owned portions of the subject property could be developed under the existing R-200 zoning. Ms. Weiss testified that with a density bonus for MPDUs, R-200 development would permit the construction of 80 more homes than the Master Plan recommends and the proposed Land Use Plan provides. Tr. Nov. 21 at 163-164. She also noted that development under the existing zoning would be unlikely to result in privately owned land being dedicated as a public school site. Tr. Nov. 18 at 61-62. The number of units that could be developed on the privately owned land would not necessarily generate enough students to require dedication of property for a school site. The PD Zone allows dedication of public land for any kind of use spelled out in the master plan and contemplates a different relationship between the school and the surrounding neighborhood, making it easier for Technical Staff to require a school site. *Id.*

Ms. Dolan testified that when land is developed under a Euclidean zone, stream buffers and forest conservation areas often are preserved through a conservation easement rather than through dedication as parkland. Because such easements often run through many individual lots, they

become very difficult to enforce. The PD Zone would facilitate getting those areas into public ownership, where they can be managed as parkland. Tr. Nov. 21 at 27-28.

Mr. Blumberg, the Applicants' land planner, testified that that if the subject property were developed under its current zoning, Parcel X would not likely be remediated to the extent proposed in this case. He stated that typically a home builder or developer would not purchase a property like Parcel X for residential development – they would work around it. Tr. Nov. 19 at 221.

Finally, both Mr. Klebasko, the Applicants' environmental planner, and Mr. Snyder, the Applicants' civil engineer, testified that that the flexibility of the PD Zone allows the project to better achieve the environmental goals that have been identified. Tr. Nov. 18 at 146, 231.

H. Environmental

The degree to which the Development Plan complies with applicable environmental standards – the environmental recommendations of the Master Plan, the Planning Board's Environmental Guidelines and forest conservation requirements – and whether that level of compliance is sufficient to justify the requested rezonings, have been the most contested issues in this case.

The Applicants submitted extensive documentation of their plans to minimize stream buffer encroachment, maximize forest retention, repair existing environmental degradation and install a comprehensive stormwater management system. Countywide Environmental Staff from the MNCPPC provided a detailed analysis of the pertinent environmental issues, particularly forest conservation and stream buffer protection, through both testimony and a thorough written memorandum that is quoted and paraphrased extensively in Part 2 below. See Tr. Nov. 21 at 3-54; Memorandum dated October 24, 2003 and revised October 28, 2003 from Mary Dolan and Steve Federline, attached to Staff Report, Ex. 41 ("Environmental Memo"). An expert witness for the Opposition argued that the proposed development would result in extensive harm to the environment, particularly with respect to forest clearing, and that the land use goals of the Master Plan could be implemented without the environmental devastation that would result from the submitted Development Plan. Evidence from each of these sources is discussed in the following sections.

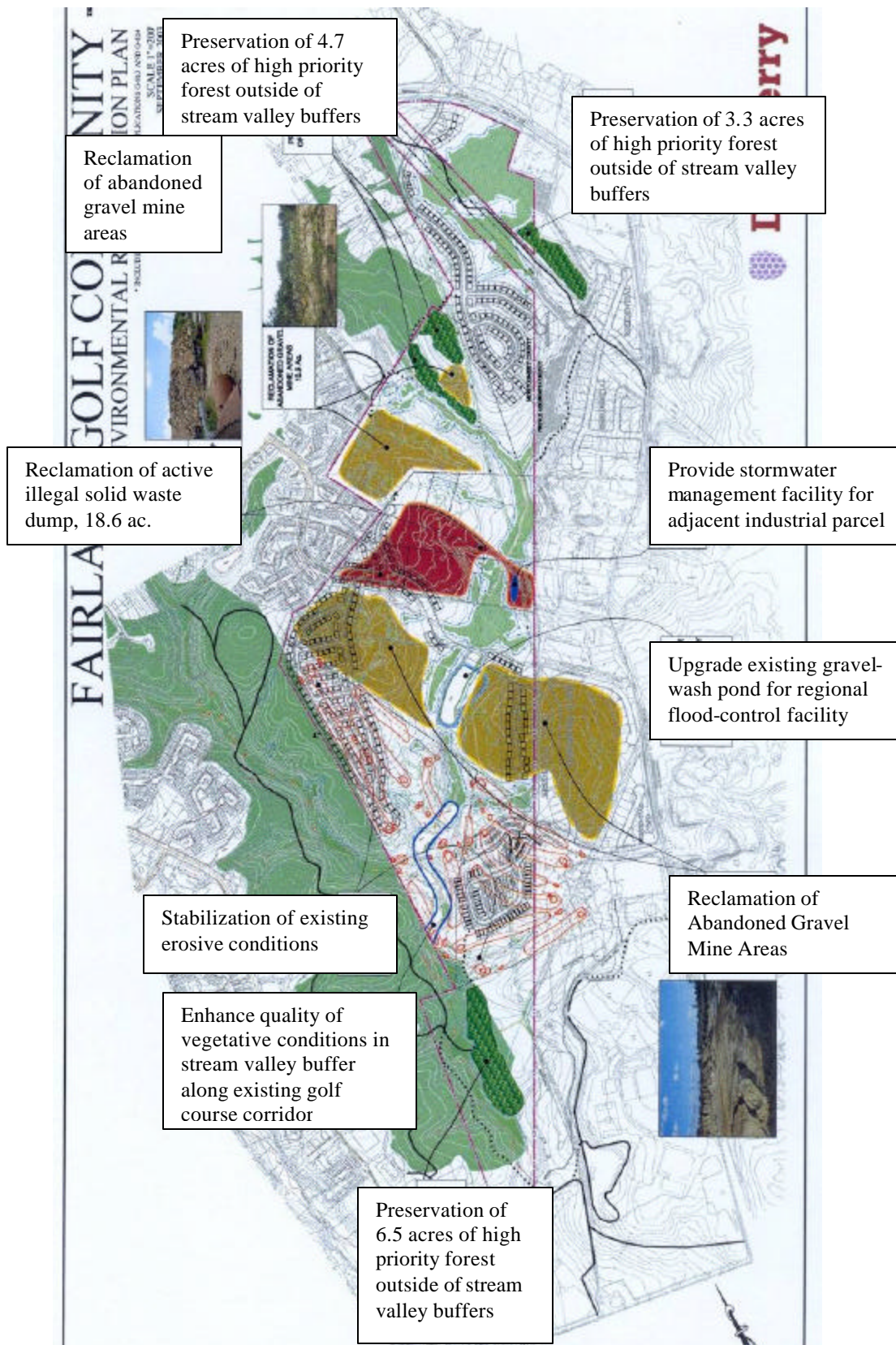
1. Applicants' Evidence

The approved NRI/FSD shows the location of all the significant environmental resources on site. The Concept Forest Conservation Plan, Exhibit 33(d), shows in great detail how the proposed Development Plan would impact sensitive environmental resources – forest, stream valley buffers, wetlands and a plant species listed by the State of Maryland as a threatened species. The proposed development would involve a substantial amount of forest clearing, but the project would satisfy forest retention requirements under county standards, and would involve very small reforestation requirements that likely would be satisfied on site. See Ex. 33(h).

The extensive amounts of wetlands and streams on the subject property make complete avoidance practically impossible. Two road crossings over streams and wetlands would be needed for infrastructure purposes, and minor disturbance to wetlands and streams would be likely for stormwater management outfalls. See Ex. 33(n). The golf course is expected to affect approximately 29.5 acres of stream buffer, but most of this would be in areas where the stream buffer is currently in a degraded state, and much of it would have shrub/scrub vegetation rather than total clearing. Tr. Nov. 19 at 12-18. The residential uses would impact approximately 2.5 acres of stream buffer. *Id.* The Applicants have proposed offsetting environmental reclamation including creating wetlands on the property, restoring stream banks in certain locations, reforestation of degraded stream buffers where possible, preserving several tracts of high quality, upland forest outside the stream buffers, and installing a stormwater management facility to capture run-off from the adjacent industrial area in Prince George's County. See Ex. 33(n); Tr. Nov. 19 at 216. The key elements of the proposed reclamation are depicted in concept on an Environmental Reclamation Plan, Exhibit 73, reproduced on the following page.

A site survey that was prompted by notification from the Maryland Department of Natural Resources of a plant listed on the "threatened species" list confirmed the presence of the plant, the Thornless Green Briar, on site. Tr. Nov. 19 at 25. The largest population is in the wetlands on the PEPCO property, where the plant appears to thrive in cleared wetlands. Individual plants of this species were found along the county line, primarily in Prince George's County, and those areas have

Environmental Reclamation Plan, Exhibit 73



been identified for protection on the Land Use Plan. *Id.* The Applicants' environmental expert, Michael Klebasko, testified that this species appears to flourish in cleared wetlands, where it gets direct sunlight, rather than in forested wetlands. Thus, the clearing of forested wetlands for the proposed development, normally considered an environmental detriment, may benefit this species. *Id.*

The Development Plan depicts a series of stormwater management facilities throughout the subject property, most of which are expected to be either surface sand filters or bioretention areas. The large pond in the middle of the site would be expanded for use as a source of golf course irrigation water, and also to provide channel protection (water quantity) control and 10-year and 100-year storm flow control. The Applicants intend to reduce stormwater management requirements through measures such as natural area conservation, disconnecting roof-top and other run-off from the sewer system by directing it overland, and environmentally sensitive development. See Ex. 33(h).

2. Environmental Staff Analysis

The proposed development would not comply fully with either the specific environmental recommendations of the Master Plan or the requirements of the Environmental Guidelines. Environmental Staff nonetheless recommends approval of the present zoning applications, and the Development Plan, because on balance, the plan would "result in an environment on this unique site that is superior in many respects to a development plan that strictly complies [with] all current environmental standards and guidelines." Environmental Memo at 2. Mary Dolan, who testified on behalf of Environmental Planning Staff, stated that to the extent that the golf course operation allows it, restoration would be carried out in areas of the stream valley buffer that have been degraded by past land uses. Detailed information about restoration is not available at this stage, but the former mining areas and Parcel X would be stabilized, at a minimum, and some restoration would take place on Parcel X. Ms. Dolan acknowledged that some clean-up of Parcel X would be required under state law, with or without the development proposed here. She added, however, that Staff expects a higher level of improvement than would be achieved by simply covering the site with a membrane and a small amount of fill. They expect that in connection with the proposed development, some of the materials would be removed, the contents of the landfill would be examined thoroughly, and some degree of

reclamation would take place depending on whether it would be less injurious to keep the materials there or remove them. Tr. Nov. 21 at 18-19.

Having thoroughly reviewed the Development Plan and supporting submissions, Environmental Planning Staff concludes that the requests for PD zoning and the Development Plan would “further the effort to minimize and avoid sensitive areas, accelerate the sustainable reclamation of severely degraded areas, provide acceptable rationale in support of flexibility in the strict implementation of the stream buffer, and provide in concept for remedial environmental improvements above and beyond existing regulations and laws as offsets to the buffer encroachments depicted on the development plan.” Environmental Memo at 1. Staff notes that additional information would be submitted to allow continued refinement at preliminary plan and site plan review, including details concerning (1) sustainable reclamation of Parcel X, (2) water quality treatment of stormwater runoff from the adjacent industrial area in Prince George’s County, and (3) stream buffer restoration and/or enhancement in degraded areas, as well as stabilization and enhancement of wetland habitat above the stream crossing. *Id.* Staff’s analysis is summarized below.

a. Development Plan Finding

Under Section 59-D-1.61 of the Zoning Ordinance, the District Council’s approval of a development plan requires a finding that “by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site.” Environmental Staff concluded, as quoted below, that this finding can be made in this case:

This site currently contains several unstable and erosive conditions, including areas severely degraded by previous sand and gravel mining, illegal dumping (Parcel X), and an old golf course (See Attachment 1). This finding is satisfied by the accelerated remediation of these areas on the large-scale basis as proposed by this plan. Stabilization will minimize further degradation to water quality to the public benefit at private expense, with the offsetting improvements designed to contribute to rehabilitation of the streams and near stream habitat to a sustainable natural condition.

Environmental Memo at 2.

b. Master Plan Environmental Recommendations

In weighing the recommendations for the subject property, Environmental Staff considered three environmental objectives stated in the Master Plan: (1) creating “an improved golf course design located outside the stream valley, and protection of other environmental features such as steep slopes and wooded area” (Master Plan at 47); (2) considering the degraded area of the McKnew Tributary watershed as an “environmental restoration area” (Master Plan at 133-134); and (3) protecting specific high-quality environmental resources, particularly those in the area of the Silverwood and McKnew tributaries (Master Plan at 119). Staff acknowledged early on that in light of the amount of land needed to implement the Master Plan’s land use recommendations for the subject property, as well as unique site conditions, larger countywide environmental objectives and environmental constraints, it would not be possible to comply fully with all of the environmental and land use objectives stated in the Master Plan. Accordingly, Staff determined that professional judgments would have to be made about balancing and prioritizing those objectives.

Environmental Staff’s first priority was protecting “the unique and high quality resources of the Silverwood Tributary and undisturbed portions of the McKnew Tributary.” Environmental Memo at 3. These areas contain a large, contiguous forest (over 400 acres), as well as “significant areas of diverse geologic and soil conditions and resulting unique vegetation.” *Id.* Staff considered the preservation of these resources and maintaining their accessibility to the public to be of countywide importance. *Id.* Protecting the forested portion of the McKnew Tributary was also considered important, particularly contiguous forest nearest to the stream, which is linked to the existing forest in McKnew Local Park. The priority placed on preserving resources of countywide significance resulted in concentrating development in areas of the subject property with several existing uses that are unstabilized and environmentally damaging. *Id.* Staff considered the Applicants’ contribution toward environmental restoration in these areas, including reconnecting the severely bisected McKnew Tributary, to be extremely important.

Environmental Staff acknowledged that the Development Plan would not fully achieve the Master Plan objective of achieving a golf course design “outside the stream valley buffer,” noting

that “there does not appear to be room totally outside of onsite environmentally sensitive areas to accommodate the three land-intensive development uses including the predominantly single family [detached] residential, the golf course, and the school.” *Id.* Environmental Staff intends to continue to probe for plan adjustments that will further reduce the intrusion into the stream buffers. Staff notes that with the exception of unavoidable roads and utilities, stream buffer encroachments on the Development Plan are limited to “the fringes of defined buffer areas that currently lack the environmentally desirable characteristics and resource values such as streams, forest, wetlands, rare, threatened or endangered species, and the like.” *Id.* Given the current “deplorable conditions” and the opportunity for overall environmental enhancement, Staff considers it appropriate to adopt a flexible approach. *Id.*

c. Environmental Guidelines

The Planning Board’s Environmental Guidelines recommend specified buffer areas around sensitive environmental resources, but provide for flexibility in applying the guidelines under circumstances such as those found on the subject property. *Id.* at 4. Environmental Staff’s approach may be summarized as follows:

In reviewing a proposal to encroach into the environmental buffers, staff will consider whether there are feasible and reasonable alternatives to avoid the encroachment, whether the encroachment is the minimum necessary to make the project “work,” and what offsetting measures are proposed to improve the riparian stream area beyond what would occur with the standard application of environmental laws, regulations, and guidelines.”

Environmental Memo at 4.

With 182 acres in priority forest and 104 acres in stream buffer, 30 percent of the subject property has environmental constraints. Under the proposed Development Plan, residential lots and roadways would affect approximately 2.5 acres of stream buffer (lots 39 and lot 175 along the extension of Cedar Tree Lane, lot 12 in the cul-de-sac off Cedar Tree Lane, Lots 35 and 36 near the golf course clubhouse, and the backs of lots 37-39 near the clubhouse). *Id.* The golf course as shown on the Development Plan would affect approximately 29.5 acres of stream buffer, but much of that area would have shrub/scrub vegetation rather than being totally cleared. *Id.* The golf course would require stream buffer clearing for paved golf cart paths, as well as bridges for trails or golf course connections.

The record does not indicate precisely how much of the 29.5 acres of encroachment would involve clearing. Environmental Staff concluded, however, that the breadth of the remediation and restoration provided would clearly offset the extent of buffer encroachment. *Id.*

d. Forest Conservation

The subject property contains approximately 182 acres of forest, of which roughly 100 acres would be cleared to accommodate the proposed development. About two thirds of that 100 acres is high priority forest, particularly in three areas: the main residential neighborhood off Route 198; the golf holes adjoining the McKnew Tributary south of McKnew Local Park (holes 12, 13 and 14); and the golf hole in the southern spike (hole 3). *Id.* The PD zoning applications are subject to a minimum 20 percent forest retention requirement. The Development Plan shows retention of 20 percent of the site in forest both on the golf course and in the residential community, so this requirement would be satisfied. *Id.* However, additional forest conservation requirements applicable to both the golf course and the residential component would require a small amount of reforestation (less than five acres), which Environmental Staff indicated could be addressed at preliminary plan and site plan review. Artery's engineer testified that he believes the reforestation requirements can be met on site. Tr. Nov. 18 at 138.

The Concept Forest Conservation Plan, Exhibit 33(d), provides a detailed view of where forest would be cleared and where it would be retained. The plan is necessarily preliminary, given that the current golf course layout is illustrative. It indicates, however, that most of the forest retained would be in very small pockets, many containing an acre of land or less. Only three forested areas greater than 10 acres would be preserved: most of the southern spike (30 acres); the high quality forest along the McKnew Tributary in between golf holes 13 and 14 (10 acres); and the eastern portion of the G-814 property, which is mostly wetlands (12 acres).

Environmental Staff emphasized that the most important forest retention connected with this project was accomplished by deleting from the rezoning and the Land Use Plan portions of the Silverwood Tributary area that were included in the original application for G-813. Ms. Dolan (Environmental Staff) observed that the Master Plan includes an illustration of a golf course community

that shows two residential cul-de-sacs and part of the golf course extending onto park property near the Silverwood Tributary. She described the portion of Fairland Park near the Silverwood Tributary as a beautiful, upland hardwood forest that includes the stream and stream buffer, a considerable area outside the stream buffer, and a lot of steep slopes and valuable habitat. Tr. Nov. 21 at 26. Technical Staff lobbied hard to have this area excluded from the zoning applications entirely, to maintain it as a large, contiguous block of high quality forest and protect water quality in the tributary. *Id.* at 53-54.

e. Water Quality

The subject property is located in the McKnew Park and Silverwood subwatersheds of the Little Paint Branch watershed, which is designated Use I by the State of Maryland. Environmental Memo at 5. Existing imperviousness in the upper Little Paint Branch, composed of the McKnew and Silverwood tributaries, is currently approximately 12 percent. Staff estimates the amount of imperviousness in the same area after construction of the proposed development at about 15 percent, which is consistent with maintaining the Use I designation and maintaining or improving stream and habitat conditions in the upper Little Paint Branch. *Id.* Staff notes that areas of the McKnew Park subwatershed that have been severely degraded by mining, the landfill and, to a lesser extent, the existing golf course would be the subject of extensive remediation efforts in connection with this development. Staff finds that the Development Plan “incorporates the remediation concept in the CSPS [*Countywide Stream Protection Strategy*] for use in the highly disturbed portions adjoining the stump dump and former unreclaimed gravel sites, and proposes streamside habitat enhancements for comprehensive watershed improvement.” *Id.* These offsetting improvements “are a major element in supporting staff’s approval of the land use concept and golf course layout proposed in the development plan.” *Id.*

3. Opposition Evidence

Several community members who testified in opposition expressed dismay at the prospect of cutting down even part of the beautiful forest in and around Fairland Park for development purposes. In addition, Gunpowder Golf Club Players Ltd., an organization that was formed to oppose the proposed development, called as a witness John Parrish. Mr. Parrish was designated an expert in

native plant life of the Maryland Piedmont Region and has a detailed familiarity with the natural areas of the subject property and many parts of the County.

Mr. Parrish argues that the proposed development would violate the Master Plan and the *General Plan Refinement of the Goals and Objectives for Montgomery County*, approved and adopted in 1993 (the "General Plan"). He also contends that the recommendations in the Master Plan were based on limited ecological information available at the time, and were not strong enough to safeguard the unusual ecosystems found in the area.

Mr. Parrish outlined several ways in which the proposed development would violate specific General Plan objectives, including the following (See General Plan at 70, Tr. Nov. 21 at 84-87):

- To preserve, protect and restore the environment and natural resources. Mr. Parrish describes the proposed development as removing important natural resources on a large scale.
- To preserve natural areas and features that are ecologically unusual or environmentally sensitive or possess outstanding natural beauty. Mr. Parrish contends that a golf course of the scale and design proposed here would not preserve unique biological communities, while renovation of the current golf course would avoid that devastation.
- To preserve and enhance a diversity of plant and animal species in self-sustaining concentrations. Mr. Parrish contends that the proposed development would not maintain linkages in habitat, and that the MNCPPC has not done a good enough job in identifying areas that have the most species in need of protection. He argues that there are many species on the subject property that are important to biodiversity and occur nowhere else in the County or occur only to a small extent off-site, which would be eliminated by the proposed development. He also stated that the proposed development would cause widespread fragmentation of habitat, breaking natural areas up into little pieces subject to invasive species and degradation.

- To increase and conserve the County's forest and trees by ensuring forest conservation, tree planting and related maintenance, and encouraging private and public land owners to protect existing trees and plant additional, environmentally appropriate, native trees on their property. Mr. Parrish acknowledged that the proposed development would conserve some trees, but pointed out that it would result in a net loss of forest and trees.

In assessing compliance with the General Plan, Mr. Parrish did not address the fact that the *Fairland Master Plan*, like all area master plans, explicitly amends the General Plan --- the Master Plan's more specific recommendations effectively override the provisions of the General Plan.

Although Mr. Parrish did not request designation as an expert in land planning, he opined that the Development Plan would be inconsistent with the Master Plan, and provided an extensive analysis of the basis for his conclusion. He noted that the Master Plan cites the basic goals stated in the General Plan, which are to conserve and protect natural resources to provide a healthy and beautiful environment for present and future generations, and to manage the impact of human activity on our natural resources in a balanced manner to sustain human, plant and animal life. See Master Plan at 19. Mr. Parrish contends that removing up to 100 acres of forest is a step towards degrading stream quality and would be inconsistent with the cited goals. Tr. Nov. 21 at 88.

Mr. Parrish acknowledged the Master Plan's recommendation for a golf course community with single-family, detached homes. He would interpret the Master Plan, however, to be consistent with a range of possibilities. He observed that there should be a balance between the Master Plan's environmental goals and its land use goals. He contends that renovating the existing golf course on its current footprint, with homes on surrounding private land, would better achieve the goals related to preserving the natural environment than the proposed plan, which spreads development over the whole landscape. Tr. Nov. 21 at 90. It would avoid impacts on the southern spike, which is a high-quality forest. *Id.* at 99-100. It would preserve the trees on the existing golf course, some of which are magnificent, 100-year-old specimens. Moreover, the MNCPPC could bring the existing golf course up to modern standards with respect to stormwater management and other issues. *Id.* at 100.

Mr. Parrish agreed with the Master Plan's observation that the stream valley between McKnew Local Park and Fairland Park contains a very diverse and unusual plant community that is worthy of protection. He testified that "there isn't anything comparable remaining of this size in the entire County." Tr. Nov. 221 at 102.

Mr. Parrish observed that the proposed golf course would not comply with the specific recommendation in the Master Plan for "an improved golf course design located outside the stream valley." See Master Plan at 47. He acknowledged that the proposed development would not directly impact the steep valley of the Silverwood Tributary and would protect some buffer areas for the McKnew Tributary; however, some portions of the stream valley that currently are forested would be severely impacted. In his opinion, a development plan could be designed that would offer the same benefits in restoring degraded areas while preserving existing resources that are in good condition.

I. Trails

Fairland Park contains a network of paved and natural-surface trails, several of which run through the southern spike of the subject property. These trails are used by hikers, bikers and equestrians. Lynn Coleman, Trail Planning Supervisor for the MNCPPC, testified that Fairland Park has only two trails have been formally designated as such, which means they are signed, shown on an MNCPPC map and routinely maintained by park personnel. Tr. Nov. 19 at 63-64. One of the designated trails is paved and the other is a natural surface trail called the Holly Trail. *Id.*

The paved trail is part of a loop that extends from the area of the Silverwood Tributary through the southern spike and into Fairland Regional Park in Prince George's County. A portion of this paved trail would have to be removed to accommodate the golf hole proposed for the southern spike. Artery would be responsible for the cost of relocating this trail and removing any unused sections of the existing trail. See Tr. Nov. 19 at 78, 84-85. The Land Use Plan shows a potential relocation route for the paved trail that would go around the golf hole and connect through to Prince George's County. See Ex. 95(a).

Fairland Park has only one natural-surface trail that has been formally designated as such, the Holly Trail, which starts near the Silverwood Tributary and connects to the paved trail above the point where it would be relocated for the proposed development. The park also has natural-surface trails that Park & Planning has not formally approved, which are called "People's Choice" trails – trails formed by park visitors using the same route over and over again. Austin Steo, a member of Mid-Atlantic Off Road Enthusiasts ("MORE"), testified that the People's Choice trails are heavily used and are a significant element of the natural experience provided by Fairland Park. Tr. Nov. 17 at 78-82.

MORE has done a significant amount of work on trails in Fairland Park, including the Holly Trail. Mr. Steo testified that MORE is opposed to the proposed development because it would remove the loop that links Fairland Recreational Park in Montgomery County with Fairland Regional Park in Prince George's County, and allows them to operate as one park from the user's perspective. *Id.* at 79-80. Mr. Steo described the plan to relocate the paved trail as a fix that would not take into consideration the wholeness of the park and the trail system. *Id.* at 80. He testified that with the stream and wetlands running through the southern spike, there is limited space where a sustainable trail can be located, and he fears that building the proposed golf hole where the paved trail is currently located would make it impossible to really replace that trail with one that would connect the two sides of the park, provide a natural experience for trail users and yet avoid negative impacts on natural areas. *Id.* at 82, 88-89.

Mr. Steo submitted two maps of Fairland Park trails that he prepared over the course of the last several years using a GPS (global positioning system) unit. See Ex. 51; attachment to Ex. 97. These maps show the paved trail, the Holly Trail and a series of other non-paved trails. The second of these maps was submitted after the hearing, so there was no opportunity for discussion or cross-examination. This second map identifies several trails or parts of trails to be closed, but most of them appear to be in areas near the Silverwood Tributary that would not be affected by the proposed development. Mr. Steo appears to be under the impression, for example, that the Holly Trail, which members of MORE were instrumental in building, would be eliminated as a result of the proposed development. In fact, a map submitted by Ms. Coleman indicates that the Holly Trail would not be

affected. See Ex. 75. The paved trail to which it connects would have to be partially relocated, but the Holly Trail itself would remain in place.

Ms. Coleman testified persuasively that Staff shares MORE's view that it is critical for park users to be able to travel from the Montgomery County side of the park to the Prince George's County side "in an attractive, park-like environment on a well-designed, hard surface trail." She stated that Staff "will do what it takes to achieve that," Tr. Nov. 19 at 80, and will make sure that any realignment of the paved trail preserves connectivity. *Id.* at 72. Ms. Dolan quoted the following trails objective stated in the Fairland Park Master Plan, to which Mr. Steo also referred:

Development of a trail system using good conservation principles that connects all facilities, providing recreational opportunities for walkers, bicyclists, hikers and equestrians, and minimizing disturbance of the natural environment and the adjacent steep slopes and mature hardwood forests.

Tr. Nov. 19 at 67, quoting Fairland Park Master Plan Highlights (See Ex. 62).

The Staff Report in these cases recommends that any formal trails that are disrupted by the proposed development be rerouted during the subdivision and site plan process in accordance with the trail planning guidelines of the Fairland Park Master Plan. See Staff Report, Ex. 41, at 24. When asked whether that goal can be achieved in this case, Ms. Coleman stated emphatically "It will be achieved. . . we feel that it can be achieved and we will make sure it is achieved." Tr. Nov. 19 at 66-67.

Ms. Coleman also testified that Staff intends to take the opportunity, as directed by the Fairland Park Master Plan, to assess the People's Choice trails during the preliminary plan and site plan process for the proposed development. This would involve realigning the trails where needed to make them more sustainable from an environmental point of view and for maintenance purposes. *Id.* at 68. Formalizing these trails, with signage and maintenance, would improve their utility for the public and hopefully enhance environmental conditions. Staff is committed to working with equestrians and bikers to develop a natural-surface system that will provide the kind of loop trails and connectivity the witnesses spoke about. She is "hopeful" that this can be accomplished with the golf hole shown in the southern spike on the Land Use Plan. Tr. Nov. 19 at 80.

J. Development Standards for the Zone

As shown in the table below, the proposed development would satisfy all but one of the applicable development standards under the PD-2 Zone pursuant to Code §§59-C-7.12 through C-7.18.

The Applicants Seek waivers from the unit mix requirements.

Element	Required/Permitted	Proposed
Minimum Area	Five alternative criteria including (a) sufficient gross area to construct at least 50 dwelling units; or (e) Master Plan recommendation and uniquely situated so development of less than 50 units is in the public interest.	G-813 property satisfies (a). G-814 property satisfies (e).
Unit Mix	200-800 units (G-813): Minimum 30% single-family detached, 20% single-family attached and townhouses. Less than 200 units (G-814): Minimum 35% single-family detached, 35% attached and townhouses.	G-813: 87% single-family detached, 13% single-family attached and townhouses. G-814: 100% single-family detached. Waivers are requested, per Code § 59-C-7.131.
MPDUs	G-813: 12.5% (49 units). G-814: none because < 35 dwelling units. All 396 units taken as a whole: 50 MPDUs.	G-813: 50 units G-814: zero.
Density	Two dwelling units per acre.	G-813: 1.3 d.u./acre. G-814: 0.3 d.u./acre.
Compatibility	Proposed uses must be compatible with other proposed uses & with existing or proposed uses in the vicinity.	See Part V. A. below.
Green Area	30%	G-813: 87%. G-814: 86%.
Parking	Two spaces per dwelling unit. G-813: 782 spaces. G-814: 10 spaces.	G-813: 1,511 spaces for dwelling units plus 234 for golf course and on-site recreation center. ⁶ G-814: 20 spaces.
Setbacks	Buildings other than single-family detached must be at least 100 ft. from any property line that adjoins land recommended in master plan for single-family detached zone.	Written binding element ensures all single-family attached + townhouses at least 100 ft. from northern property line adjoining R-200 property.
Building Height	No greater than building setback from any property line that adjoins land recommended in master plan for single-family detached zone.	Applicants' Land Planning Report states no building would be taller than its distance from adjacent land recommended for single-family detached zoning.

⁶ The Staff Report lists 1,170 parking spaces for the dwelling units. The Hearing Examiner used the numbers shown on the final version of the submitted Land Use Plan, on the assumption that these more recent numbers are correct. The difference is immaterial from a zoning standpoint because in either case, the number of parking spaces proposed is greater than the number required.

Code § 59-C-7.131 authorizes the District Council to waive the unit mix requirements if it finds that “a proposed development . . . achieves goals, policies or recommendations stated in an approved and adopted master or sector plan.” Both Technical Staff and the Applicants’ land planner found that the waivers requested from the unit mix requirements should be granted because the proposed development would help achieve the Master Plan recommendation to provide as much single-family detached housing as possible. See Ex. 41 at 15; Ex. 33(a) at 17-18.

The only elements addressed in the table above that are not binding are green space and building height. The Applicants cannot provide a precise calculation of green space at this juncture because the layout of the golf course is illustrative, and minor changes during preliminary plan and site plan review could affect that calculation. However, the golf course use virtually guarantees that open space on the subject property would vastly exceed the required 30 percent. The Land Use Plan is silent with regard to building height and the issue was not discussed at the hearing. However, as noted above, the Land Planning Report, Ex. 33(c), states that the development would comply with the statutory requirement that no building be greater in height than its distance from any adjacent property that is recommended in the Master Plan for single-family detached zoning. The Land Use Plan shows that only a small number of residential lots would be adjacent to land that is recommended for single-family detached zoning, and all of the dwellings on those lots would be either single-family detached homes or duplexes designed to have the appearance of single-family detached homes. Under these circumstances, it is reasonable to expect that the building heights would comply with the Zoning Ordinance and that the Planning Board would ensure such compliance at site plan review.

K. Public Facilities

Under the County’s Adequate Public Facilities Ordinance (“APFO,” Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether public facilities will be adequate to support a proposed development. The APFO requires the Planning Board to assess the following public facilities in connection with each new subdivision: transportation; schools; water and sewage facilities; and police, fire and health services. The Planning

Board's application of the APFO is limited by parameters that the County Council sets each year in the Annual Growth Policy ("AGP") Ceiling Element, described further below.⁷ The County Council also adopts an AGP Policy Element during each odd-numbered year, which provides policy guidance on development matters.⁸ On October 28, 2003 the County Council adopted the FY 2003-5 AGP Policy Element, which made fundamental changes in the AGP. Those changes will apply to any development for which a completed preliminary plan application is submitted on or after July 1, 2004. See FY 2003-5 AGP Policy Element at AP1.

While the ultimate test under the APFO is carried out at subdivision review, the adequacy of public facilities is an important component of the District Council's determination in a rezoning case as to whether the reclassification would serve the public interest. Because of the discretionary nature of the rezoning process, a comprehensive review of the adequacy of public facilities is necessary at this stage. The Applicants hope to have their preliminary plan approved by May 2004, in which case it would obviously be filed well before July 1, 2004 and would be evaluated under the AGP standards currently in effect. Nonetheless, the discussion below addresses APFO compliance under both scenarios: a preliminary plan filing before July 1, 2004, under the current APG, and a preliminary plan filing on July 1, 2004 or later, under the FY 2003-5 AGP Policy Element.

1. Transportation

Pursuant to the current AGP, subdivision applications may be subject to two different tests, Policy Area Transportation Review ("PATR") and Local Area Transportation Review ("LATR").⁹ PATR divides the County into geographic policy areas for which the adequacy of public facilities is addressed on an area-wide basis. With regard to transportation, a staging ceiling may be established for each policy area, specifying the maximum number of new jobs and housing units that public facilities

⁷ See FY 2004 AGP Ceiling Element, Council Resolution No. 15-259, at 2-3. The Hearing Examiner hereby takes official notice of the FY2004 AGP Ceiling Element.

⁸ Background, 2003-5 Annual Growth Policy – Policy Element, Council Resolution No. 15-375. The Hearing Examiner hereby takes official notice of the FY2003-5 AGP Policy Element.

⁹ See *Local Area Transportation Review Guidelines Approved and Adopted July 2002* ("LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines adopted by the Planning Board in July 2002.

in that area can support.¹⁰ LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods.

In the present case, the subject property is located within the Fairland/White Oak Policy Area for purposes of PATR, which has no remaining capacity for residential development under the current AGP. However, the proposed project would qualify for an exemption from the transportation staging ceiling under FY 2004 Alternative Review Procedures Section TA3, TA3.2 and TA3.3.2. See FY 04 AGP §TP3 (Resolution No. 15-259 at 20). These sections provide a mechanism for certain projects to proceed without any action by the applicant under PATR or LATR, if the applicant pays the County a Development Approval Payment ("DAP"). The applicant's only remaining obligation under the transportation provisions of the AGP is to include in its preliminary plan application all information that would have been necessary if LATR requirements applied. TA3.3.2 specifically makes this procedure available for a planned unit development in the Fairland area that includes a golf course developed through a public/private partnership, provided that two phasing requirements are met:

- Not more than 100 units, in addition to MPDUs, are built in the first fiscal year after construction of the development begins; and
- Not more than 100 units, in addition to MPDUs and the unbuilt remaining portion of all prior year's approved units, are built in any later fiscal year.
- The applicant must agree that it will build the same number of MPDUs among the first 100 units that it would be required to construct at that location if the subdivision consisted of only 100 units.

FY04 AGP at TA3.3.2, TA3.4 (Resolution No. 15-529 at 21).

Under the FY 2003-5 AGP Policy Element, PATR has been eliminated. In addition, an exemption from LATR requirements is provided on terms virtually identical to those cited above from the FY 04 AGP. An applicant for a planned unit development in the Fairland area that includes a golf course developed through a public/private partnership need not take any action under LATR

¹⁰ LATR Guidelines at 1.

requirements except submitting an LATR study, provided that the applicant pays a DAP. See FY 2003-05 AGP Policy Element at TA3 (Resolution No. 375 at 10-11). The same phasing requirements cited above apply. See *Id.* at 11.

Thus, under either the current FY04 AGP or the new provisions taking effect on July 1, 2004, the Applicants are not required to make any demonstration with regard to policy area traffic impacts to comply with the APFO. Under the FY 2003-5 AGP Policy Element, they do not need an exemption from PATR because PATR no longer exists. The exemption would still free them from any obligation to make traffic improvements or take other actions to comply with LATR. However, as discussed below, the Applicants' LATR study indicates that the proposed development would pass LATR review without making any improvements. As a result, if the preliminary plan applications is filed after July 1, 2004, the Applicants may choose not to take advantage of the special exemption provided in TA3. Complying with LATR would free the development from the phasing constraints specified with regard to MPDUs. It would also affect the development fees due to the County, although precise amounts are not available for comparison.

In any event, the Applicants would be required, at a minimum to submit information necessary to comply with LATR, and they have done so in connection with these applications. The Applicants' transportation planner estimated, based on traffic generation rates established by the Planning Board, that the residential development proposed for the subject property would generate 291 trips during the morning peak hour and 367 trips during the evening peak hour.¹¹ The traffic analysis assumed that the proposed new golf course would generate peak hour trips comparable to the number generated by the existing Gunpowder Golf Course, so no additional trip generation was included for that use. See Transportation Planning Staff memorandum dated October 24, 2003 and revised October 28, 2003, attached to Staff Report ("Transportation Memo"), at 7-8. The residential development planned for the complete site, including the Prince George's County portion, is expected

¹¹ Transportation Planning Staff reported these figures as 289 trips and 368 trips during the morning and evening peak hours, respectively. This small difference is immaterial for purposes of zoning-stage analysis. Compare Ex. 33(j) at 17 with Transportation Planning memorandum dated October 24, 2003 and revised October 28, 2003, attached to Staff Report, at 8.

to generate a total of 387 morning peak hour trips and 487 evening peak hour trips. *Id.* at 8. An analysis of key intersections, comparing conditions with existing and background traffic to expected conditions with the proposed development, indicates that the proposed development would not cause any of the intersections identified by Technical Staff to experience critical lane volume (“CLV”) above the applicable congestion level. See Ex. 33(j) at 25; Transportation Memo at 9.

Transportation Planning Staff recommends that the proposed development be limited, in connection with the current rezoning proceedings, to a maximum of 346 single-family detached units and 50 single-family attached units, “phased for up to 100 market-rate housing units each year.” Transportation Memo at 2. The recommended phasing would be consistent with the phasing required under the Golf Course Community Exception provided for the proposed project in the FY 04 AGP and the FY 2003-5 AGP Policy Element. However, as outlined in Part III. M. below, the Applicants do not intend to be bound by that phasing limitation if they file for preliminary plan approval on or after July 1, 2004 and elect not to make use of the Golf Course Community Exception. Thus, Transportation Planning Staff’s phasing recommendation is not a binding element of these applications.

Transportation Staff also recommended a series of measures to be taken in connection with preliminary plan and site plan review, including coordinating with the State Highway Administration in its ongoing MD 28/MD 198 Corridor Improvement Study; evaluating the possible relocation of the existing traffic signal on MD 198 from McKnew Road to Cedar Tree Drive as called for in the Master Plan; providing adequate internal streets and sidewalks in the development to support interconnectivity and pedestrian connections to Fairland Park; installing traffic calming measures as needed to discourage non-local traffic on local residential streets; coordinating with Montgomery County Public Schools on terminating Saddle Creek Drive at the school site and providing access to the school via Cedar Tree Drive; and coordinating with the SHA regarding roadway alignment alternatives under consideration as part of the planning study for the Intercounty Connector. See Transportation Memo at 2-3. The submitted Land Use Plan already reflects some of these items – interconnected streets and sidewalks, and traffic calming measures such a traffic circle on Cedar Tree Drive and a raised pedestrian crossing that functions as a speed bump. The Applicants’ transportation planner, Wes

Guckert, testified that the Applicants are prepared to comply with each of the other recommendations from Transportation Staff. Tr. Nov. 18 at 77-78.

Mr. Guckert opined that the proposed development would implement the transportation recommendations stated in the Master Plan and satisfy the transportation-related elements of the purpose clause for the PD Zone. He also opined that the project would not overburden the local roadway network because the major congestion point in the area is the at-grade intersection of US 29 and MD 118, which is being remedied with a new grade-separated interchange currently under construction. *Id.* at 84-86. In addition, he opined that the proposed development would be in the public interest from a transportation standpoint, because it would create a redundancy in the local road network that would allow residents of both existing and new homes to move about the community without traveling on collector or arterial streets. *Id.* at 82.

Several Opposition witnesses argued that the proposed development would worsen already difficult traffic conditions in the surrounding area. See testimony of Ernesto Tamayo, Anthony Norris, Thomas Milligan and Anne Lehan. However, they presented no substantial, probative evidence to support their anecdotal impressions that traffic is congested and getting progressively worse.

2. Schools

The subject property is located within the Burtonsville Elementary School and Banneker Middle School service areas, and is in the Paint Branch “base area” of the Northeast Consortium, which is made up of Blake, Paint Branch and Springbook high schools. All of the schools in the service area and in the Northeast Consortium are projected to be over capacity in coming years. Staff Report, Ex. 41 at 7. Technical Staff estimates that the proposed development would generate approximately 99 elementary, 42 middle and 57 high school students. The school site shown on the Land Use Plan for the proposed development could help alleviate overcrowding at the elementary level if funds are appropriated to construct a school. A community member with long experience with school capacity issues testified that elementary schools in the Paint Branch cluster have capacities ranging from 450 to

700 students – several times the number the proposed development is expected to generate – and that a good elementary school would have a capacity within that range. Tr. Nov. 18 at 52.

In the FY04 AGP, the County Council declared school capacity to be adequate for anticipated growth in all high school clusters at all grade levels. See FY04 AGP at S4 (Resolution No. 15-259 at 27). The Council directed the Planning Board, in reviewing preliminary plans of subdivision in FY 2004, to consider all schools to be adequate for APFO purposes in all clusters.

The 2003-5 AGP Policy Element establishes a new test for school adequacy. Capacity must be assessed using the approved Capital Improvement Program (“CIP”). If school capacity is found to be inadequate to support a proposed subdivision but the projected enrollment would not exceed 110 percent of capacity, the Planning Board may approve the subdivision if the applicant commits to paying a School Facilities Payment. See 2003-5 AGP Policy Element at S4 (Resolution No. 15-375 at 13). If projected enrollment would exceed 110 percent of capacity, the Planning Board must not approve the subdivision. See *id.*

Counsel for Artery submitted into the record a memorandum from County Council Staff to the Council, dated October 21, 2003, which describes the outcome of the new school capacity test stated in the 2003-5 AGP Policy Element. See Ex. 80(b). As explained in that memorandum, under both the current CIP and the revised CIP proposed by the Superintendent of Schools, the school clusters that would serve development on the subject property would have adequate capacity to support subdivision approval without a School Facilities Payment.

3. Other Public Facilities

The Applicants expect to be able to extend existing public water lines in Route 198, Old Gunpowder Road and Cedar Tree Drive to serve the proposed development. Existing sewer lines within Fairland Park would be extended to serve the residential portions of the proposed development. The Applicants' civil engineer explained that in Montgomery County, property is categorized into one of six categories for water and sewer purposes, from Category 1, which means public water and sewer are in place, to Category 6, which means no water or sewer service is planned. In late 2001, the

Applicants succeeded in having the subject property reclassified from Category 6 to Category 4, which means the systems are adequate for land planning purposes. See Ex. 71. Those categories will automatically change to Category 3, allowing the Applicants to prepare final plans for water and sewer construction, if two things conditions are met; one relates to a sewer main size determination and the other requires Planning Board approval of a preliminary plan for a golf course community consistent with the Master Plan. Tr. Nov. 18 at 154-155.

Electric, natural gas and telephone services are available adjacent to the subject property. See Ex. 33(h) at 5. Police, fire and health services may reasonably be expected to be available in the vicinity in light of existing residential development in the surrounding area.

L. Other Public Interest Issues

Opposition witnesses argued that the proposed development would be contrary to the public interest because it would destroy public recreational facilities that are used and loved by many members of the local and regional community: Gunpowder Golf Course and the existing forest and trail system in the southern spike. The trails are discussed in Part III.I above and forest impacts in Part III.H. Issues more directly related to the golf course are discussed in this section.

Several individuals who regularly play golf at Gunpowder Golf Course testified, some on behalf of organizations. Ronald Smith testified as the President of Gunpowder Golf Club Players Ltd., an organization of about 300 members that was formed in 2001 to oppose the development proposed here. He presented a petition in opposition to the proposed development with signatures from over 1,000 members, players and other concerned citizens, which requests that MNCPPC be required to provide a 20-25 year lease to the current operator of Gunpowder Golf Course to allow him to enlarge the course and update its facilities. See Ex. 89. One witness suggested that the current operator has been unable to make any substantial improvements because he was never given more than a one-year lease. Testimony was also offered on behalf of a group of Korean-American golfers, mostly senior citizens, who enjoy Gunpowder Golf Course. The central concern voiced by numerous opposition witnesses is being priced out of playing golf. Currently, Gunpowder Golf Course charges a very

modest \$14 fee, making it affordable for many people. In addition, the course layout is small compared to many modern golf courses, so players find it easy to get exercise by walking the course rather than using a golf cart. Players at Gunpowder Golf Course seem to like it the way it is – they enjoy the natural, wooded setting, and people who want a fancier golf course can go to nearby Cross Creek Golf Course.

Jerry Bush, an Administrative Supervisor with the MNCPPC, is responsible for budgeting and management for enterprise fund operations such as county golf courses. He testified that when the MNCPPC took over Gunpowder Golf Course in 1980, it was privately operated. The County's intent was to keep it under private management until the MNCPPC could take it over and improve it. Mr. Bush stated that the course did not have what many golfers would consider desirable conditions. For example, the tees and greens were too small and too close together, the course was too short and not very interesting, underlying sand and gravel deposits and the lack of a full irrigation system made it difficult to maintain good turf conditions, the cart paths were fairly rudimentary, and the clubhouse was inadequate. Tr. Nov. 19 at 109-110, 126-127. In 1991 the County commissioned a study with recommendations for improving the course. The estimate at that time to renovate the course within its current footprint was approximately \$5.1 million, with an additional \$1.3 million to acquire property to the north for a driving range and miniature golf course. Partial funding for these improvements was included in the CIP as early as 1991. During the 1990s the project was amended to broaden the scope into a public/private partnership with the golf course extending beyond its existing footprint, a concept that evolved from the *Fairland Master Plan* process. At that point discussions began about making additional land available for a longer, championship-type golf course.

The Opposition fears that if the proposed development goes forward, the fees at the new golf course will be closer to the levels charged by private golf courses, and will be too high for people of modest means to play regularly. Mr. Bush testified that the proposed facility would be under MNCPPC ownership, managed by a private party under a 40-year lease. That lease would require approval by the Planning Board and the County Council, after public hearings. In developing a private/public partnership, the MNCPPC examines not only the financial terms of the lease but the public benefit. For

example, the Planning Board looks for fee reductions or waivers for members of the community who might not be able to afford the fee structure. They also retain control over fees by requiring Planning Board approval for any fee changes, for the duration of the lease. Tr. Nov 19 at 99-100.

Joseph Hills, the intended developer and operator of the proposed golf course, testified that he expects the fees to be lower than those charged by private golf courses, and that he plans to offer discounts to seniors and youth. He said that he would be able to charge lower fees because Artery has assumed responsibility for a great deal of the clean-up and land preparation costs, leaving Mr. Hills with a relatively low cost structure. His goal is to create a quality, affordable golf course. It would have a nice entrance with a view of quality housing and the signature golf hole (hole no. 10, in the mine pit), a spacious driving range with real grass, and a clubhouse that is nice, but not overly grand. The Applicants' counsel and several witnesses emphasized that the fee schedule would be an element of future lease negotiations between the MNCPPC and Mr. Hills, and that members of the community will have the opportunity for input on the lease terms.

The Opposition also is concerned that the much larger layout of the proposed golf course would make it more difficult to walk, so that most people would have to use a golf cart. Mr. Hills described the proposed golf course as very walkable, but his description of the course suggested that the term "walkable" is somewhat subjective. Mr. Hills stated that with five exceptions, the tee for one hole is within 150 to 200 feet of the green for the previous hole. In one case the tee for the next hole is about 400 feet away from the previous green, and in three cases the distance from green to tee is about 700 feet. Tr. Nov. 19 at 150, 151, 176. He also noted that a golf cart shuttle would be available to take walking golfers from hole 9 to hole 10, the mine pit hole. A visual comparison of the existing and proposed golf course layouts leaves a clear impression that the proposed course would involve considerably more walking. The fact that a shuttle would be provided at one location is another indication that the proposed course would be walkable for some, perhaps, but not for all.

Opposition witnesses also argued that pursuing the proposed development is fiscally irresponsible on the part of the MNCPPC. First, they contend, tax dollars that were spent only three or four years ago to build Fairland Park should not be wasted by tearing down facilities now. Second, they

argue that it would be foolish to build another upscale golf course so close to the Cross Creek Golf Course a couple of miles away, which is suffering financially. The Opposition submitted into the record a number of articles from national publications describing the highly competitive environment that currently exists for golf courses, many of which are seeing their profitability suffer. See Exs. 88(I), 92. The testimony indicated that one golf course not far from the subject property has already gone out of business. Mr. Bush also testified that all the golf courses in this area are declining. Tr. Nov. 19 at 117.

When asked why the MNCPPC proposes a new, upscale golf course on the subject property in such a market environment, Mr. Bush stated that he might not support a proposal for a new golf course in the current market, but this would be a replacement for an existing course. He stated candidly that it is very difficult to say whether the proposed golf course would succeed. Tr. Nov. 19 at 118. Its success or failure would depend on whether other golf courses come into the market and how the population changes. If people perceive it as a good value, they will come. *Id.* at 121. Mr. Hills testified, similarly, that the golf course industry has become very competitive. He stressed, however, that good projects always do well – it's the marginal projects that are struggling. He stated that both of his golf courses in Maryland (Waverly Woods in Ellicott City and Blue Nash in Laytonsville) are thriving. He maintained that a good product, well located and marketed, will do well. Tr. Nov. 19 at 185.

Mr. Bush acknowledged that the Little Bennett Golf Course, which the MNCPPC built in 1994, has seen declining use in the last several years – “suffering some of the same things as all the golf courses in the area are.” Tr. Nov. 19 at 117. As many as ten new golf courses have opened in that area since Little Bennett opened. They are all the same type, large courses with higher fees, and the area does not have the population base to support them all.

Mr. Bush noted that financial projections, market studies and risk assessments are important elements of the Planning Board's and the County Council's review of lease agreements like the one that would be prepared for the proposed development. He acknowledged that any private/public partnership presents some risk to the MNCPPC, but the nature of that risk depends on the terms of the lease. At the end of the lease, the golf course and its improvements would revert to MNCPPC ownership and management. If the property reverts to the Commission under favorable

terms, it could be a tremendous asset – the MNCPPC could get ownership and the right to operate at a much lower cost than the cost of building the course, giving the agency a good chance to turn a profit and keep the course as a community asset. *Id.* at 121.

Mr. Bush rejected the suggestion by an Opposition questioner that the County could end up subsidizing the lessee if the golf course starts to lose money. Mr. Bush stated that the lease has not been negotiated, but subsidizing lack of profitability is not the agency's approach. The operator has to be able to pay for the improvements and operating costs. *Id.* at 123.

M. Phasing

As discussed in Part III.K. above, if the requested reclassifications are granted, the proposed development may be eligible for subdivision approval without the aid of the Golf Course Community Exception provided in the AGP, if the preliminary plan applications are filed after July 1, 2004. The Phasing Plan, Ex. 95(b), divides the development planned for the G-813 property into three phases, but specifies that the phases may be constructed concurrently. A footnote explains that if subdivision approval is obtained pursuant to the AGP Golf Course Exception, the phasing will comply with the requirements established in that provision for phasing and MPDUs, which allow no more than 100 units to be built per fiscal year, in addition to MPDUs. The full text of the phasing plan for the G-813 property is reproduced below. Development of the five houses planned for the G-814 property would take place in a single phase, concurrent with Phase 1 of construction on the G-813 property.

N. Community Support

Three Fairland residents, Stuart Rochester, Patrick Zilliacus and Tom Spears, all members of the Citizens' Advisory Committee ("CAC") that worked on the Master Plan, testified in support of the proposed development. The CAC Chairman, Mr. Rochester, described the important role of the CAC in the Master Plan process and the extensive opportunities for public involvement during that process. Tr. Nov. 18 at 9. Two CAC members testified that the community supported the Master Plan, and that no serious opposition was voiced during the Master Plan process to developing a golf course community on the subject property.

Phasing Plan, Excerpted from Ex. 95(b)

FAIRLAND GOLF COURSE COMMUNITY LOCAL MAP AMENDMENT/Application No. G-813 DEVELOPMENT PROGRAM

THE BUILDINGS AND RECREATIONAL FACILITIES WITHIN THE PROJECT WILL BE DEVELOPED IN 3 PHASES, AS SET FORTH IN THIS DEVELOPMENT PHASING PROGRAM. LAND DEVELOPMENT AND CONSTRUCTION ACTIVITIES WITHIN PHASE II AND III MAY PROCEED BEFORE, DURING OR AFTER PHASE I CONSTRUCTION COMMENCEMENT OR COMPLETION. THE DEVELOPMENT PHASES MAY BE CONSTRUCTED CONCURRENTLY.¹

Phase	Units in Phase	Non-Residential
I	<ul style="list-style-type: none"> • 174 single-family detached units • 42 single-family attached/MPDU units 	<ul style="list-style-type: none"> • Golf course, clubhouse, maintenance building, and 180 parking spaces • Phase specific roadway, stormwater management system, and community amenities (i.e., local tot lots, open space, pedestrian trails, etc.)
II	<ul style="list-style-type: none"> • 71 single-family detached units 	<ul style="list-style-type: none"> • Community-wide amenities (pool, clubhouse, playground, tennis courts, and 54 parking spaces) • Phase specific roadway, stormwater management system, and community amenities (i.e., local tot lots, open space, pedestrian trails, etc.)
III	<ul style="list-style-type: none"> • 96 single-family detached units • 8 single-family attached/MPDU units 	<ul style="list-style-type: none"> • Phase specific roadway, stormwater management system, and community amenities (i.e., local tot lots, open space, pedestrian trails, etc.)

FAIRLAND GOLF COURSE COMMUNITY LOCAL MAP AMENDMENT/Application No. G-814 DEVELOPMENT PROGRAM

THE BUILDINGS AND RECREATIONAL FACILITIES WITHIN THE PROJECT WILL BE DEVELOPED IN 1 PHASE CONCURRENT WITH PHASE I OF LOCAL MAP AMENDMENT NO. G-813.

Phase	Units in Phase	Non-Residential
I	<ul style="list-style-type: none"> • 5 single-family detached units 	<ul style="list-style-type: none"> • Roadway, stormwater management facilities, local playground, and pedestrian trail

¹ If Applicant receives subdivision approval utilizing the Golf Course Community Exception to the Alternate Review Procedure of the Annual Growth Policy, as found in County Council Resolution 15-259 and 15-375, then the construction of dwelling units shown in each Phase shall be subject to the following restrictions:

- Not more than 100 units in addition to MPDUs shall be built in the first fiscal year after construction of the development begins.
- Not more than 100 units in addition to MPDUs and the unbuilt remaining portion of all prior years' approved dwelling units shall be built in any later fiscal year.
- Applicant shall construct 13 MPDUs among the first 100 dwelling units constructed.

Mr. Rochester suggested that the opposition voiced in this hearing came from individuals who were not involved in the Master Plan process, some of whom do not live in the surrounding community and have “no knowledge of or interest in the larger goals and priorities of the Master Plan that residents of the planning area worked long and hard to produce.” Tr. Nov. 18 at 11. He testified that he has worked on the proposed golf course community off and on for the better part of a decade, and stated that “it is now what it has always been, [a] complicated but earnest effort to deliver some important benefits to an often neglected planning area.” *Id.* at 9.

Mr. Rochester explained that the CAC wanted a signature project with single-family detached homes in the east side of the planning area, which had been built up with dense, nondescript developments. When a representative of the Gould family, which owns or controls much of the private land within the subject property, proposed the concept of a golf course community, the CAC found it to be very compatible with their concept for the area adjacent to the park. The CAC believed that development on the privately-owned portions of the subject property was inevitable, so they worked to get the best kind of development they could.

Two of the CAC members opined that the proposed development would be consistent with the Master Plan. Mr. Rochester identified two key elements: an elementary school site that would be ideal both for the new community and for the existing residential neighborhood to the west, and a high proportion of single-family detached homes to improve the housing balance.

Mr. Spears described his role on the CAC as an advocate for schools and transportation issues. He considers the school site to be the most important benefit of the development proposed here. As the Montgomery County School Board has stated, the issue today is not just money to build schools, but finding available land now that the County has been so built-up. Tr. Nov. 18 at 50. Currently, elementary school students from the McKnew and Saddle Creek communities west of the subject property get bussed down Route 198 to the overcrowded Burtonsville Elementary School. With the new school site provided on this plan, there would be a true neighborhood school that children

could walk to. Mr. Spears described a neighborhood school as a unifying, positive development that promotes family and community involvement.

O. Opposition

In addition to the environmental expert whose testimony is discussed at length in Part III.H.3. above, ten individuals testified in opposition to the proposed development. These included representatives of the Greencastle Lakes Community immediately west of the subject property, a group of Korean-American golfers, Gunpowder Golf Club Players Ltd., the Gunpowder Citizens Association, Trail Riders of Today ("TROT"), and Mid-Atlantic Off-Road Enthusiasts ("MORE"). Many of their concerns have been discussed in detail in previous sections, including impacts on the trails, trees and other natural elements of Fairland Park; potential effects on traffic; and whether the public interest would be served.

A representative of the Greencastle Lakes Community submitted petitions bearing 230 signatures in opposition to the proposed development. See Exs. 52 and 94. Unfortunately, many of these signatures appear to have been obtained on the basis of a written description that suggested the proposed development would replace 336 acres of Fairland Park with homes and a golf course, a gross exaggeration of the anticipated impacts on the park.

One witness, Anne Lehan, expressed concern about likely impacts on school overcrowding. She noted that although the Applicants would provide a school site, someone would have to pay to build and operate the school. Until that takes place, the estimated 100 new elementary school students would have to be absorbed by existing schools, which are already crowded. Ms. Lehan also noted that taxpayers would bear the cost of improvements necessitated by this development, because impact fees paid by the developers would not be enough to cover the cost of new schools and roads. Finally, Ms. Lehan observed that a golf course community with a private community center and pool would not be integrated into the broader community, negating some of the purported benefits of having an upscale community in the area. Her comments were submitted in writing, on behalf of herself and her friend Connie Shaw, at Exhibit 84.

Another witness, Gregory Nolan, suggested that the proposed driving range and golf holes on the Prince George's County side of the development would be too close to balls fields and other recreational facilities in Fairland Regional Park. Mr. Nolan also maintained that on the Montgomery County side, there would be too many houses too close to golf holes. Mr. Hills, the intended designer, builder and operator of the new golf course, testified that safety is one of his primary concerns in designing a golf course, and that the layout shown on the Land Use Plan provides more than adequate buffers between all of the holes and other land uses.

Mr. Nolan also asked how the proposed development would be affected by the Intercounty Connector. Transportation Planning Staff observed that the 1997 Draft Environmental Impact Statement for the ICC identified a Master Plan Alternative and two alternative alignments. One of these alignments, the Northern Alternative, would pass through the northern corner of the subject property. Some of the residential lots shown off of MD 198 would be affected, as would access via MD 198 to other homes proposed off of MD 198. See Transportation Memo at 6. The Planning Board and Technical Staff "typically do not recommend right-of-way dedication of non-Master Planned alignments or place rights-of-way in reservation." *Id.* Thus, development is permitted to proceed on land impacted by a possible alternative roadway alignment. In this case, it appears to the potential impact would be relatively small. Some homes could be removed for the ICC, and an additional access point would have to be created for homes off of MD 198, which could involve a stream crossing. See *id.*

The record contains two letters in opposition from individuals who did not testify at the hearing. Shelley Porter wrote as President of the Burtonsville Umbrella Regional Team, which has eleven member citizens' groups, including MORE, TROT and Gunpowder Golf Players, Ltd. See Ex. 54. BURT opposes the proposed development because it would encroach on portions of Fairland Park, south of the existing golf course (the southern spike), threatening local ecosystems and removing actively used trails. Audrey Binder, a local resident who is an employee of the U.S. Environmental Protection Agency and a Certified Environmental Professional, opposes the proposed development because she believes it would result in severe environmental degradation to the beautiful natural resources in Fairland Park. See Ex. 43. She notes that the existing golf course is fully stabilized, with

the only impacts resulting from routine maintenance, whereas a new, larger golf course would involve significant construction impacts and double the impacts from ongoing maintenance, e.g. pesticides and herbicides getting into surface and ground water. Ms. Binder also voiced a concern about traffic impacts in an area that already experiences heavy congestion. (Ms. Binder attended one day of the hearing and asked questions of at least one witness, but chose not to testify.)

The record also contains letters in opposition that were written to the Planning Board by six individuals who did not testify at the hearing. See attachments to Staff Report. These letters voice the same concerns raised by the Opposition witnesses about detriment to the natural environment of Fairland Park, loss of natural space for increased congestion and loss of a well-loved, affordable golf course.

IV. SUMMARY OF TESTIMONY

MNCPPC witnesses who testified on behalf of the agency as an applicant are listed under the Applicants' Case in Chief. MNCPPC witnesses who served as zoning reviewers are listed separately under "Technical Staff."

A. Applicants' Case in Chief

1. Kenneth A. Berg, Artery/Ryland, Tr. Nov. 17 at 143-177.

Mr. Berg is Vice President of Land Use Resources with The Ryland Group, a residential developer. He testified that Artery/Ryland LLC (previously defined as "Artery") is a joint venture that was formed between The Ryland Group and Artery Development, LLC to acquire and develop the subject property for a residential golf course community. He stated that since 2000, Artery has had contracts to purchase approximately 150 acres of the subject property and about 78 acres of adjacent land in Prince George's County. Tr. Nov. 17 at 144. Since that time the joint venture has been engaged in community outreach and working with Technical Staff on the proposed development.

Mr. Berg identified the subject property on a map and described it as multiple parcels under mixed private and public ownership. He identified specifically the parcels of land for which Artery has a purchase contract, and which portions are covered by each of the two applications, G-813 and G-814. *Id.* at 145-48.

Mr. Berg noted that Artery has obtained preliminary subdivision approval from Prince George's County for 120 single-family detached residences on the property it has under contract in Prince George's County, adjacent to the subject property. (The residential component proceeded directly to subdivision approval because no zoning action was needed.) That subdivision proposal was described as part of a larger plan for a golf course community, and final site plan approval is contingent on the presentation of a lease agreement that includes all the details concerning the golf course, such as management, lease structure, etc. Final approval of the subdivision cannot be given until approval of the final lease and golf course documents. Similarly, the Development Plan proposed here prevents construction until those documents are completed. *Id.* at 155.

Mr. Berg stated that there has been a tremendous effort to coordinate the plans for the proposed golf course with both Counties. Over the course of three years, two different golf course architects have prepared four different layouts for the golf course. *Id.* at 151. This was part of the effort by the two Planning Commissions (for the two Counties) and their staffs to come up with the best golf course design. He noted that changes have been made based on comments by environmental staff, and to ensure adequate safety zones around the holes.

Mr. Berg stated that portions of the property that Artery has under contract were previously used as sand and gravel mines. Mr. Berg testified that Artery has spent extensive time with environmental planning staff at the MNCPPC, reviewing the limits of environmental features and making concerted efforts to minimize intrusion on environmentally sensitive areas. The proposed plan includes the restoration of extensive areas that were disturbed by previous mining and dumping activities. They have invested significant resources to develop a plan that sensitively integrates the golf course and home sites into the land.

Mr. Berg mentioned that the Cross Creek Golf Course discussed by community members is currently a private/public operation, but he understands that the operator plans to turn it into a private club when sufficient memberships have been sold. The golf course proposed on the subject property would be developed by Artery at no cost to the public, to be owned by MNCPPC and operated as a

public course under lease. The operation of the course and all facilities would revert to the MNCPPC at the end of the lease.

Mr. Berg also described briefly the number and type of residential units planned, the location of the proposed community center, the property to be dedicated for a public school, and the phasing plan. *Id.* at 158-161. He stated that the development plan for the property includes possible preliminary plan approval in May 2004.

Mr. Berg described community outreach efforts made during the last three years, including consultations with members of the Master Plan Community Advisory Committee to confer about Master Plan compliance. They received comments from local citizens' groups about the walkability and playability of the golf course, and have addressed those during the redesign process. They responded to community concerns about the park trails by working with Technical Staff to identify the only approved trail and make plans for its relocation. Mr. Berg noted that refinement of the plans during preliminary plan and site plan review would address trail usage throughout the area.

Mr. Berg stated that Artery has associated itself with Maryland Land Development and Joe Hills to plan and implement the golf course design. Mr. Hills and his company are experienced golf course designers and currently operate two golf courses in the Montgomery County area. His company plans to enter into a lease with the MNCPPC to operate the new golf course.

Finally, Mr. Berg suggested that the proposed development would be in the public interest for several reasons: it would result in the revegetation and restoration of Parcel X, turning a totally denuded piece of land into a manicured golf course; it would clean up the former mining areas; it would replace a golf course that has substandard maintenance and sends sediment into the streams; and it would provide upscale housing as called for in the Master Plan. *Id.* At 168-169. Mr. Berg acknowledged, under questioning by the Hearing Examiner, that the MDE holds the current owner of the subject property responsible for the cost of cleaning up and capping Parcel X. Artery would pay the cost of cleaning up the former mining sites.

2. William E. Gries, MNCPPC Land Acquisition Specialist. Tr. Nov. 17 at 179-228.

Mr. Gries has been a land acquisition specialist for the MNCPPC for 25 years and was designated an expert in the acquisition and sale of parkland and its conformance with master plans. It is his responsibility to implement recommendations for public land acquisitions identified in master plans, including parkland and right-of-way acquisitions. He determines whether funding is available for a particular purchase and seeks funding through the CIP process where needed. He also carries out the disposal of parkland. If the proposed rezoning is approved, Mr. Gries will be responsible for negotiating future land acquisitions and related transactions. All of his acquisitions are approved by the Planning Board before closing.

Mr. Gries explained that the County has owned Gunpowder Golf Course since about 1980. It was acquired with the intention to improve or renovate the course.

Mr. Gries was involved in the process of adopting the current *Fairland Master Plan* during the mid 1990s. He worked with Technical Staff to evaluate various park proposals, including those for Fairland Park. He attended many public meetings with the community at which he explained what the master plan would call for and provided information about the acquisition program and its implementation. Based on his participation in the public meetings and the development of the Master Plan, Mr. Gries believes that the Master Plan contemplated land exchanges in conjunction with the recommended public/private golf course community development. Tr. Nov. 17 at 220, 223-24. He remembers public meetings where exhibits were shown that depicted possible options for development across property lines. Doing that would require land exchanges. On cross-examination, Mr. Gries rejected the suggestion that the concept embodied in this proposal was first developed *after* the Master Plan was adopted. He emphasized that the concept for this golf course community was developed early on in the master plan process. *Id.* at 224.

Mr. Gries identified on an aerial photograph (Ex. 54) the boundaries of Fairland Park, which presently measures 363.33 acres, including a portion of Parcel X that is not contiguous to the rest of the park. Tr. Nov. 17 at 182-183. The portion of Parcel X that the County already owns was purchased after the Master Plan was adopted, in furtherance of its objectives. Mr. Gries stated that if

Montgomery County acquires the remaining 27 acres of Parcel X, as proposed in conjunction with this development, Fairland Park will have approximately 391 acres. He noted that Fairland Regional Park in Prince George's County has 153.97 acres, so the combined bi-County facility would have approximately 545 acres after the acquisition proposed here.¹² He also described the extensive recreation facilities available in the combined bi-county park. The existing golf course straddles the county line. Most of the links are in Montgomery County, but the main access, clubhouse and maintenance yards are in Prince George's County. The only public recreation facilities that would be displaced by the proposed development are the golf course, the paved trail, and some of the "People's Choice" trails – trails that develop over time when people carve their own path through the woods and others follow.

Mr. Gries identified each of the parcels of land included in the subject property, noting their ownership and approximate acreage as shown on Exhibit 50, and how many acres would change hands in the land exchanges contemplated. Tr. Nov. 17 at 186-188, 199.

Mr. Gries stated that carrying out the land exchanges would require compliance with county and state regulations that require public hearings and several layers of approval. He opined that in this case, all of the required findings would be made and the approvals obtained.

With regard to the Parcel X clean-up, Mr. Gries testified that the owner of most of that parcel, has entered into a consent decree with the MDE requiring him to remove surface debris, regrade to provide positive drainage, install a membrane to prevent pollutants from reaching the groundwater and cover the site with a five-foot cap of clean fill. Mr. Gries acknowledged that funding for the County's purchase Parcel X is not currently available. He expects to use funding from general obligation bonds for this purchase, as requested in the CIP, rather than program open space funds. *Id.* at 214.

Mr. Gries testified that in 1991 a plan was adopted entitled "Master Plan for Fairland Bi-County Park" (the "Fairland Park Master Plan"). See Ex. 62. It was prepared by Technical Staff with community input and approved by the full MNCPPC – both the Montgomery County and the Prince

¹² Mr. Gries explained that due to different park classification systems, the Montgomery County portion of the park is called "Fairland Recreational Park" and the Prince George's County portion is called "Fairland Regional Park." Each is run separately by an autonomous park agency.

George's County Commissioners. A park master plan is not reviewed by the County Council. Mr. Gries opined that the development proposed here would be consistent with the Fairland Park Master Plan, which recommends exploring a public/private partnership for the development of an improved and expanded golf course with residential development around the links.

Finally, Mr. Gries opined that the proposed development would be in the public interest because the County would gain 36 acres of additional parkland, 11 acres for an elementary school site, and a golf course at no cost to the County other than the price of the land. In addition, significant environmental improvements would be made.

3. Alfred Blumberg, land planner. Tr. Nov. 17 at 229-247; Nov. 17 at 88-110; Nov. 19 at 188-223.

Mr. Blumberg was designated an expert in land planning. He described the surrounding area for the subject property as the area identified in the Master Plan as the Fair Oak/Saddle Creek Community, and discussed the split between the two zoning applications.

Mr. Blumberg analyzed the compatibility of the proposed development with the surrounding area by dividing the development into five neighborhoods A through E. He noted that it made sense from a land planning perspective to locate the community recreation facilities nearest to the most urbanized neighborhood with the highest density, because homes in that neighborhood would not have large yards. Lacking significant private open space, those residents would benefit from having common open space nearby. Tr. Nov. 17 at 227.

Mr. Blumberg opined that the proposed development would be consistent with the recommendations of the *Fairland Master Plan*, including its recommendation for a golf course community in Area 2 of the Oak Fair/Saddle Creek neighborhood, "which corresponds to the portion of the subject property north of the existing Gunpowder Golf Course. Mr. Blumberg identified a map on page 119 of the Master Plan that shows a proposed location for "Improvement to Gunpowder Golf Course" north of Fairland Park, straddling the county line and abutting McKnew Local Park. This demonstrates that the Master Plan envisioned expanding the golf course beyond its current limits. Tr. Nov. 17 at 242-243. Mr. Blumberg also noted specific Master Plan recommendations for the proposed

golf course community that the proposal here would satisfy nearly completely. These recommendations include a maximum of 396 residential units in Montgomery County, providing non-vehicular access to Fairland Park and retaining a large percentage of open space and green area. Tr. Nov. 17 at 243, Nov. 18 at 89-91.

Mr. Blumberg opined that the distribution of MPDUs proposed – eight units in neighborhood A, eight units in neighborhood B and 34 units in neighborhood E – would be consistent with the Master Plan's recommendation that MPDUs be distributed throughout the development. Tr. Nov. 17 at 245-47. He explained that the MPDUs in Neighborhoods A and B would be built as duplexes with two units per building. Each two-unit building would be built to look like a large single-family detached home, except with a wall down the middle and two doors. These units would be designed to blend into the neighborhood and look much like the other houses. The larger group of MPDUs in Neighborhood E would not stand apart, as a separate component of the development, but would be integrated into a neighborhood of similarly sized and configured homes built as villas.

Mr. Blumberg noted, in response to an issue raised by a community member, that the gas pipeline that runs through the subject property is identified on the Development Plan. He stated that such pipelines are very common in Montgomery County. In this case the pipeline would be relocated to accommodate the proposed development by moving it away from residences and into the golf course area. The pipeline requires periodic servicing that involves digging into the ground, so it cannot be sited underneath a structure. It may be relocated so it runs through residential yards instead of under houses, or it may be relocated within a road right-of-way. Tr. Nov. 18 at 101-103. That expense would be borne by the developer.

With regard to the purposes of the PD Zone, Mr. Blumberg opined that the proposed development would satisfy each component. Tr. Nov. 18 at 103-109. It would implement the General Plan and Master Plan. Its design would facilitate and encourage social and community interaction with a network of sidewalks and trails connecting each of the neighborhoods on the subject property to the school site, on-site recreational facilities and Fairland Park. The character of the development would revolve around the large areas of open space created by the golf course, forested areas, stream valleys

and proximity to Fairland Park, all of which would give the community a very distinct visual character and identity. No commercial uses are included because this development would be too small to make such uses financially viable, and having a small commercial use that would likely fail would saddle the community with an unoccupied building, vulnerable to vandalism. Tr. Nov. 18 at 107-108. There are a number of convenience commercial facilities nearby in Laurel and Burtonsville, so the residents of the proposed development would have ready access to convenience goods. The proposed development would promote a broad range of housing types by providing four different options: single-family detached dwellings, duplexes, detached “villas” and townhouses. *Id.* at 109, 189.

The development would have two types of open space, passive and active, covering a large percentage of the site. The development would take the greatest possible aesthetic advantage of trees by minimizing grading and complying with the forest conservation requirements. Even where the largest number of trees would be taken down in the southern spike, the clearing has been sited to remove mostly a less-desirable type of tree. Mr. Blumberg emphasized that in his 25 years doing land development in Montgomery County, this site is probably as severely degraded as any he has ever worked on. He noted the stump dump, stream degradation, erosion and run-off from the industrial uses in Prince George’s County, and stated that the planners have done a good job of addressing the many environmental pressures on this site. Combining a golf course with a residential development results in a number of trade-offs. Some environmentally sensitive areas that have not been treated properly in the past would be improved under the proposed plan. Other areas occupied by the golf course location would lose some trees; however, the net effect would be to improve the stream and the stream valley buffer.

Mr. Blumberg stated that the network of sidewalks and paths proposed for the site would tend to reduce reliance on the automobile by allowing residents to walk among the residential and recreational areas, and enabling children who currently are bussed to school, as well as many in the new houses, to walk to school. The development can be considered large scale because of the number of acres, although with a density of about 1.26 units per acre dictated by the Master Plan, the number of dwelling units is relatively small.

Mr. Blumberg opined that the proposed development would be compatible with surrounding residential land uses, and would make the subject property more compatible with the surrounding area than the property is in its current, degraded state. Tr. Nov. 19 at 201-202.

Mr. Blumberg also testified in detail about how the proposed development would satisfy the development standards for the PD Zone, and why the density proposed would be appropriate. *Id.* at 197-206. He noted that the Applicants request waivers, as permitted under the Zoning Ordinance, from the unit mix parameters established under the PD-2 Zone, and opined that the necessary waivers may appropriately be granted. *Id.* at 197-199. Mr. Blumberg testified that the evidence also supports each of the five findings that the District Council must make under Code § 59-D-1.61 before approving a development plan. Tr. Nov. 19 at 207-209.

Finally, Mr. Blumberg pointed out that school capacity has been deemed adequate to support development in all clusters under the AGP currently in effect. Under the AGP provisions that take effect in July, 2004, the Paint Branch Cluster, which would serve the proposed development, would have adequate capacity either under the current CIP or the larger CIP that has been proposed by MCPS. Tr. Nov. 19 at 209-215.

Under questioning by the People's Counsel, Mr. Blumberg opined that if the subject property were developed under its current zoning, Parcel X would not likely be remediated to the extent proposed in this case. He stated that typically a home builder or developer would not purchase a property like Parcel X for residential development – they would work around it. Tr. Nov. 19 at 221. He noted that this is one reason the proposed Land Use Plan designates Parcel X for parts of the golf course.

4. Stuart Rochester, Chairman, Fairland Master Plan CAC. Tr. Nov. 18 at 9-32.

Mr. Rochester is the Chairman of the Fairland Master Plan Citizens' Advisory Committee (the "CAC"), which was appointed with 20 members in about 1992. Tr. Nov. 18 at 9, 18. The group had a cross-section of community association members, business representatives and an environmental representative. They first prepared an issues report that outlined conditions in the planning area that they believed needed to be addressed, then held meetings over a period of about five years. The

Master Plan exercise got a great deal of attention in the community and the local press during the 1990s, and the CAC made sure that its meetings and issues such as the proposed golf course community were well-publicized. The CAC remained in existence even after the Master Plan had been adopted, because there had been a great deal of controversy related to the implementation of the previous Master Plan for the Fairland/White Oak area. The CAC continued to meet periodically and address implementation issues, including the development proposed here.

Mr. Rochester described himself as a key participant in the master plan process, and also as someone who “has spent much of my civic life fighting on the side of the civic environmental cause and can count on one hand the number of times I’ve actually testified on behalf of the development project.” Tr. Nov. 18 at 9. He and most of the CAC members were critical of the development plan that was first presented after the Master Plan had been adopted, because they felt it would have taken away too much of the park. CAC members also insisted on limiting the number of units. He believes that the developer has worked with the CAC in good faith and addressed members’ concerns. The project as currently presented is much better both from an environmental perspective and from a design standpoint, in terms of the scale and impact on the surrounding community. *Id.* at 22.

Mr. Rochester observed that the Master Plan was approved unanimously by the Montgomery County Planning Board and County Council, and was supported overwhelmingly by the community of homeowners who would be most directly affected. *Id.* at 10. He emphasized that the concept of a golf course community was discussed off and on for two years during the master plan process, in meetings that were advertised and open to the public. The details were not resolved during the Master Plan process, but the basic elements of land swaps and a new golf course on a new campus were established back in 1995 or 1996. *Id.* at 21. During the process of writing the Master Plan, and even when the Master Plan went before the County Council for approval, there was no significant opposition to the golf course community. *Id.* at 12. Mr. Rochester maintained that the area next to Fairland Park will not remain undeveloped – something will be built on that site, and the park deserves a well-planned, attractive development that will enhance and stabilize the neighborhood.

Mr. Rochester testified that one of the primary thrusts of the Master Plan was to encourage more home ownership, particularly east of US Rte. 29, where a high percentage of transient residents has had negative impacts on the school system, property values and the quality of life in general. The proposed development would provide a much needed elementary school site, as well as a high percentage of single-family detached homes to balance the apartments and townhouses to the east.

Mr. Rochester opined that the proposed development would be fully consistent with the Master Plan. *Id.* at 30. The CAC wanted a signature project with regard to home ownership to shore up the east side of the planning area, which had been built up with very dense, nondescript developments. The idea the developer brought to them was very compatible with their concept for the area adjacent to the park, which they knew was not going to remain in the pristine condition the equestrians and environmentalists would prefer. Mr. Rochester pointed to the well-located school site and the preponderance of single-family detached homes as particularly significant.

5. C. Patrick Zilliacus, Member, Fairland Master Plan CAC. Tr. Nov. 18 at 32-48.

Mr. Zilliacus has been a member of the CAC for more than ten years. He endorsed the testimony of Mr. Rochester in its entirety. He added when the Gould family (owners of part of the subject property) and Konterra (the original developer) first approached the CAC, they used a map that was very similar to the diagrams presented in this case. There have been many changes for environmental and other reasons, but the basic concept was very similar. The developer was very explicit from the beginning that the development would require exchanges of public and private land.

Mr. Zilliacus testified that during the master plan process the CAC members were given a nature tour of some of the areas included in this case. He was very impressed at the time by how undesirable the area appeared, with mined out sand and gravel pits, a petroleum pipeline, and electric transmission lines. He thinks the proposed development would be a big improvement.

Mr. Zilliacus also testified that the golf course community concept was discussed a great deal during the master plan process and he does not recall any opposition to it. He opined that the

proposed development would be consistent with the Master Plan and would balance the goals set forth in the plan.

6. Tom Spears, Member, Fairland Master Plan CAC. Tr. Nov. 18 at 48-64.

Mr. Spears is a member of the CAC, and has been a member of the East County Citizens' Advisory Committee for six years. He served on the PTA at Banneker Middle School and Paint Branch High School from 1990 to 2002. He moved to Montgomery County 24 years ago, and he has seen the Fairland/Burtonsville area change from 70 percent home ownership to about 30 percent today. Growth and change have created overcrowding problems in the school and the whole quality of life in the community. These problems led him to join the CAC.

Mr. Spears described his chief role on the CAC as an advocate for schools and transportation issues. He considers the school site to be the most important benefit of the development proposed here. As the Montgomery County School Board has stated, the issue now is not just money to build schools, but finding available land now that the County has been so built-up. Tr. Nov. 18 at 50. Currently, elementary school students from the McKnew and Saddle Creek communities west of the subject property get bussed down Route 198 to the overcrowded Burtonsville Elementary School. With the new school site provided on this plan, there would be a true neighborhood school that children could walk to. Mr. Spears described a neighborhood school as a unifying, positive thing that promotes family and community involvement. He stated that the elementary schools in the Paint Branch cluster have capacities ranging from 450 students to 720, and he estimated that a good elementary school would have capacity within that range. *Id.* at 52.

7. Wes Guckert, Transportation Planner. Tr. Nov. 18 at 65-88.

Mr. Guckert was designated an expert in transportation planning and traffic engineering. He testified that he performed an LATR study using parameters supplied by Technical Staff, and concluded that with the traffic anticipated from the proposed development, all of the intersections studies would operated with critical lane volumes (CLVs) less than the applicable congestion standard. Tr. Nov. 18 at 67-71. He also reviewed each of the recommendations made for this project by Transportation Planning Staff at the MNCPPC and how the Applicants would comply.

Mr. Guckert reviewed current and newly adopted AGP provisions, noting that the new AGP provisions eliminate PATR altogether. As a result, because the proposed project would satisfy LATR requirements, it would not need to use the special exemption provided for it. Tr. Nov. 18 at 73-74.

Mr. Guckert stated that the proposed development already includes some of the elements that Transportation Staff recommended and that the Applicants are prepared to comply with each of the other recommendations made by Transportation Staff, most of which require action to be taken at preliminary plan review.

Mr. Guckert opined that the proposed development would implement the transportation recommendations stated in the Master Plan. He noted that the proposed Development Plan includes a connection from the existing roadway network to Old Gunpowder Road in Prince George's County, and follows the Master Plan's recommendations for Cedar Tree Drive and Saddle Creek Drive.

With regard to the purpose clause of the PD Zone, Mr. Guckert testified that the proposed Development Plan would provide safe and convenient pedestrian and vehicular circulation, with the recommendations made by Transportation Staff in place. He opined that the project would not overburden local roadways because the major congestion point in the area is the at-grade intersection of US 29 and Route 118, which is being remedied with the new grade-separated interchange currently under construction. *Id.* at 81, 84-86. Mr. Guckert has not identified any conflicts with the County CIP or any other applicable county plans or policies. He found that the transportation elements of the Development Plan would be compatible internally and with surrounding development, and that the internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate and efficient. *Id.* at 82 Finally, Mr. Guckert opined that the proposed development would be in the public interest from a transportation standpoint, because it would create a redundancy in the local road network that would allow residents of both existing and new development to move about the community without traveling on the collector or arterial streets. *Id.*

8. J. Patrick Klima, geotechnical engineer. Tr. Nov. 19, 2003 at 111-130.

Mr. Klima was designated an expert in geotechnical engineering. He testified that he prepared a geotechnical feasibility study for the proposed development, which involved digging

approximately 40 soil borings to sample soil conditions on the subject property, and analyzing whether they are suitable for the type of development proposed. Based on laboratory testing of those borings, they concluded that the subsurface conditions are generally highly favorable for development. The site is underlaid by sand and gravel and sandy soils that are generally very well suited to support residential structures and infrastructure such as roads and utilities. Such soils are also suitable for mass grading operations. Mr. Klima stated that this study was a little more detailed than they normally do at this stage in the development because the Applicants were concerned about the possible effects of past sand and gravel mining operations on the site.

Mr. Klima stated that his team did not have access to the existing golf course or to Parcel X, so they took no soil borings in those locations. He expects that soil conditions underlying the existing golf course will be found to be very similar to the rest of the site. Mr. Klima has reviewed environmental assessments of Parcel X that were prepared by others. He testified that past activities on that portion of the site raise concerns about possible contaminated fill materials, but the environmental assessments indicated that no gross contamination has been found. Additional studies would have to be done to determine how to handle construction on Parcel X, but Mr. Klima is confident that with standard practices – such as removing and replacing contaminated fill materials – that portion of the property can be used for residential building. Tr. Nov. 19 at 116-118.

9. Michael R. Snyder, civil engineer. Tr. Nov. 18 at 130-195.

Mr. Snyder was designated an expert in civil engineering. He prepared a civil and environmental engineering analysis of the property, as well as a Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD”) that includes a narrative text and three map pages. See Exs. 33-(e) and (f). The NRI/FSD has been approved by the MNCPPC. Mr. Snyder also prepared a preliminary forest conservation plan that shows the amount and priority of woodlands currently located on the subject property, the amount that would be cleared for the proposed project and the amount that would be retained. See Ex. 33-(d). The preliminary forest conservation plan went through many iterations, with review and comments by MNCPPC Environmental Staff at each stage. The plan shows forest clearing and retention separately for the residential areas and for the golf course, to show that each of those

activities would comply with forest conservation requirements. Tr. Nov. 18 at 136. For the most part, forest conservation requirements would be met by retaining areas of existing forest on-site. The Applicants would be required to accomplish approximately two acres of reforestation to compensate for forest to be removed for the golf course, and less than half an acre for the residential use. Mr. Snyder testified that he believes the reforestation requirements can be met on-site, but locations for that planting have not yet been identified. *Id.* at 138.

Mr. Snyder described a series of changes made in the Development Plan to address concerns raised by Environmental Staff. Some of these changes were made in response to a detailed wetlands delineation, which showed much more extensive wetlands on the site than expected, and the identification of an endangered plant species along the county line in the northern part of the property. In addition, residential areas that were originally proposed on park property west of the subject property were moved to protect environmentally sensitive resources near the Silverwood Tributary. *Id.* at 140-145. Environmental Staff established a “red line” slightly west of the area that comprises the subject property, beyond which they would not consider any development acceptable. This line appears on the concept Forest Conservation Plan, Ex. 33(d). One change that was made more for land use reasons was moving the school site from Parcel X to its current location. *Id.* at 145. Mr. Snyder opined that the proposed Development Plan respects the environmental constraints that have been identified for the subject property, and does so better than could be done under conventional zoning because of the design flexibility available under the PD Zone. *Id.* at 146.

Mr. Snyder identified the access points proposed for the development, which would be on Route 198, Cedar Tree Road and Old Gunpowder Road. He opined that the proposed Development Plan would provide adequate sight distance and circulation throughout the development.

Mr. Snyder stated that his team has prepared preliminary stormwater calculations for this project and has identified locations for stormwater management facilities. See Land Use Plan, Ex. 95(a). He described three requirements for stormwater management: groundwater recharge, water quality protection and “channel protection,” which used to be called quantity control (the new name is designed to convey the goal of replicating natural conditions in a stream to mitigate any erosion). Tr.

Nov. 18 at 148-149. In addition to stormwater management facilities at various locations throughout the site, the Applicants propose to reconstruct and enlarge an existing pond to provide stormwater management for larger storm events, perhaps on the order of the type of storm that occurs once every 100 years. The Applicants were also asked to provide some type of stormwater management facility for the industrial area in Prince George's County that abuts the site, which currently has a high level of impervious surfaces with little or no stormwater management. Run-off from that area currently flows directly into the stream that runs near the site. The Land Use Plan proposed here includes a storm water management facility between holes 11 and 12 that would be designed to capture some of that uncontrolled run-off. *Id.* at 149-150. He noted that this would be beyond what is normally required under state and county law. The storm water management plan is presently at a conceptual stage and would require DPS approval during preliminary plan review.

Mr. Snyder stated that the Applicants would also be required to have a sediment control plan. He opined that based on the preliminary grading plan, there would be no difficulty meeting the requirements of sediment control regulations. He also opined that utilities would be available and adequate.

Mr. Snyder opined that the proposed development would be consistent with the Master Plan, from a civil engineering standpoint, because it would provide interconnected roads, sidewalks and trails.

Mr. Snyder opined that the proposed development would also comply with the requirements of the PD Zone from a civil and environmental engineering standpoint. He stated that with the flexibility of the PD Zone they have been able to create an environmentally sensitive plan. The site would have approximately 87 percent "green area," which includes sidewalks and paths. The paved golf cart paths, for instance, would be considered "green area," although they would be considered impervious surface for purposes of stormwater management. Cart paths typically run on a bridge or board walk where there are sensitive environmental features. Mr. Snyder believes that the proposed development would satisfy the purpose of the PD Zone to integrate the physical and aesthetic features of the proposed residential development with the natural features of the property and surrounding

neighborhoods. He stated that they worked hard to respect environmental features, and that many of the lots would allow residents to enjoy the natural environment. He also opined that the proposed development would not overburden public facilities.

Mr. Snyder opined that from an engineering perspective, the proposed development would have safe, adequate and efficient internal vehicular and pedestrian circulation and points of access. Tr. Nov. 18 at 169. He stated that the proposed Land Use Plan would minimize grading and prevent the erosion of soil. Id. at 170. In general, grading work would be contained within the residential lots. Grading needed for the golf course would be minimized.

On cross-examination, Mr. Snyder discussed the development team's efforts to comply with the Master Plan directive to locate the golf course outside the stream buffers. He stated that in early versions of the plans there were golf holes in the northern portion of the site, near Route 198. Those holes were moved when they discovered significant wetlands in that area, plus a plant that is considered a threatened species. He also observed that the golf hole proposed for the southern spike, within a currently forest area of Fairland Park, was located as far from the stream as possible to allow for natural filtration of any run-off from the fertilizer and pesticides used on the golf course. Tr. Nov. 18 at 180-182. In addition, it was located mostly in an area of early successional pine forest, which is less valuable from an environmental perspective than other types of forest. He opined that the proposed Land Use Plan depicts the most environmentally sensitive way to develop the proposed golf course community on this site.

10. Michael John Klebasko, environmental biologist. Tr. Nov. 18 at 195-232; Nov. 19 at 11-40.

Mr. Klebasko was designated an expert in environmental science. He testified that he prepared a wetlands delineation report for the subject property, having visited the property and walked it in its entirety dozens of times since the summer of 2000. See Ex. 33(m). The Army Corps of Engineers walked the site with him and confirmed his wetlands delineation in writing. See Ex. 33(o). The importance of wetland delineation is to impose development constraints on the property, including the wetlands themselves and stream buffers. Mr. Klebasko has reviewed and agrees with the NRI/FDS

prepared by Mr. Snyder's company, and used it in preparing his environmental impact analysis for the proposed development. See Ex. 33(n).

Mr. Klebasko used an aerial photograph of the subject property and a series of close-up photographs [(Exs. 72(a) and (b))] to describe salient environmental characteristics of the site. Roughly the northern third of the subject property, the part that is bisected by the PEPCO power lines, is currently forested. A gas pipeline runs through this forested area and exist the property at the county line, approximately where the industrial area is located on the Prince George's County side. The central portion of the site, Parcel X, is a rubble and stump landfill. Just north of Parcel X are the remnants of a previously mined sand and gravel area. Immediately south of Parcel X is another fairly large area that was mined for sand and gravel. Near the middle of the site, south of Parcel X, is a large in-stream pond with a 20-foot berm and a riser structure that prevents the water from rising above a certain point by dumping it into a pipe. Tr. Nov. 19 at 205. That pond is to be expanded to serve as a stormwater management and irrigation facility for the proposed development. Immediately south of the pond is the existing Gunpowder Golf Course, and south of that is the forest area that has been called the "southern spike" in connection with this proposal.

Mr. Klebasko testified that a number of the past activities on the subject property have been detrimental to the environment, particularly water quality. Parcel X was a dumping ground for trash for a long time. The McKnew Tributary to the Little Paint Branch, which runs through the subject property, passes through a culvert underneath Parcel X, and is subject to run-off from unstabilized soils above it. Dirt roads and paths in many areas are so eroded that they dump substantial amounts of sediment directly into the stream. The parking lot for the existing golf course is not adequately paved, most of the golf cart paths are not paved and some of the vegetation is sparse, all of which results in run-off flowing directly into both the McKnew Tributary and the Silverwood Tributary to the west, which merges with the McKnew Tributary. In addition, the former sand and gravel mining areas, comprising 68 acres of the site, would require substantial reclamation work – removing trash, stabilizing the area, and improving stream valley buffers that currently are not adequate, stabilized or vegetated. Tr. Nov. 19 at 214-215.

Mr. Klebasko identified several areas of high priority that would be preserved under the proposed Land Use Plan but are outside the stream buffers, and therefore would not normally be protected from development. These areas consist of a 6.5-acre area in the southern spike, two small areas just above the McKnew Tributary and one just north of the PEPCO right-of-way that straddles the county line. *Id.* at 216.

Mr. Klebasko observed that the southern spike, which is essentially all forested, contains about 40 acres of land. One golf hole is proposed for the southern spike, resulting in about 10 acres of clearing. The remaining 30 acres of forest in the southern spike would be preserved. *Id.* at 217. Moreover, the area proposed for the golf hole contains primarily pine trees that most likely are Virginia pine, which is considered an early successional species – one of the first species to colonize an area that has been recently cleared, such as a mixed area with poor soil quality. The pine trees will grow in that poor soil and eventually create better soil conditions that hardwood trees can grow in and replace the pine. A pine forest like this is generally not considered high priority because it is not old growth forest, and the existing trees would not survive long enough to become old growth forest in a hundred years. Mr. Klebasko also noted that the golf hole proposed in the southern spike would be well outside any wetlands and the stream valley buffer.

Mr. Klebasko opined that the proposed development would improve environmental conditions on the subject property and in high-priority forest immediately to the west, near the Silverwood Tributary. The site would be cleared of debris and stabilized, stream buffers and wetlands would be enhanced, stream restoration would be carried out in certain areas and stormwater management facilities would be employed, all of which would benefit environmental resources. *Id.* at 25. The development activity would also likely bring a stop to the use of all terrain vehicles (“ATVs”), which have carved numerous paths up and down the PEPCO easement and the pipeline easement, and into high priority forest areas along the streams.

Mr. Klebasko opined that the proposed development would substantially comply with the recommendations of the Master Plan from an environmental perspective. Although the new golf course would not be entirely outside the stream valley buffers, the development would result in accelerated

remediation of severely degraded areas of the property, preservation of high priority forest both in stream valley buffers and in some upland areas, creation of additional wetlands, and establishment of a large contiguous corridor through the Little Paint Branch Watershed under public ownership, connecting McKnew Park to Fairland Park. *Id.* at 227-230.

Mr. Klebasko opined that for the reasons stated above, the proposed development would satisfy the purpose clause of the PD zone, and that the flexibility of the PD Zone allows the project to better achieve the environmental goals that have been identified. *Id.* at 231. He also opined that it would minimize grading, prevent soil erosion and preserve natural vegetation and other natural features of the site.

Mr. Klebasko also provided some detail about the anticipated impacts of the proposed development on stream buffers. As noted in Environmental Memo, the buffer areas delineated on the NRI/FSD total approximately 104 acres. The golf course as shown on the proposed Land Use Plan could affect approximately 29.5 acres of stream buffer, but much of that area would remain in shrub vegetation. Mr. Klebasko stated that approximately 78 acres of the stream valley buffers are currently forested; the remainder are cleared, open areas. Only 9.75 acres of the 29.5 acres of stream valley buffer that the proposed golf course would disturb are forested, and the vast majority of those would not be completely cleared – shrub vegetation would remain. Mr. Klebasko then identified specific areas on the Land Use Plan where stream buffer disturbance would occur and explained how to identify those areas on the Concept Forest Conservation Plan, Exhibit 33(d). Tr. Nov. 19 at 13-18. None of the stream valley buffer disturbance would take place in the southern spike.

Environmental Staff's report also noted that the proposed residential development would impact approximately 2.5 acres of stream valley buffer. Mr. Klebasko noted that only one acre of this disturbance is currently forested, and nearly all of the disturbance would be along Cedar Tree Lane, where some of the lots cross an intermittent stream in the center of the site.

Under cross-examination by a community member, Mr. Klebasko stated that many studies have been done to examine the effect of insecticides, pesticides and herbicides used on golf courses. He is not aware of any study showing that such products have adversely affected water quality

or plant life outside the golf course. He opined that the Thornless Green Briar would not be adversely affected by herbicides applied on the golf course because most of the plants are well within the stream buffer. He also testified that all of the clean-up costs associated with environmental remediation on the subject property would be borne by the private developers.

11. Charlie Steinbraker, representing First Tee program. Tr. Nov. 19 at 41-57.

First Tee is a program designed to bring access to golf to young people who would not otherwise have the opportunity. The organization uses golf as a means of teaching life skills, serving primarily low-income children. They currently operate at two locations in Montgomery County, serving about 100 children. The proposed golf course would give them an opportunity to grow, as well as a unique opportunity to have their own dedicated space. The proposed Land Use Plan includes a designated area for First Tee on the Prince George's County side, near the driving range. They would use that area for kids to receive instruction and practice their swings until they are ready to head out onto the golf course itself with a volunteer mentor. Mr. Steinbraker stated that the dedicated space for First Tee would be a public benefit.

On cross-examination by a community member, Mr. Steinbraker acknowledged that the management of Gunpowder Golf Course has been receptive to having First Tee operate there, but First Tee has not had the money to expand. He also acknowledged that Gunpowder Golf Course allows children from the Boys and Girls Club to play a nine-hole round of golf for free. He stressed that the chance to design a facility just to meet First Tee's needs is a wonderful opportunity.

12. Jerry Bush, Administrative Supervisor, Department of Park and Planning. Tr. Nov. 19 at 87-132.

Mr. Bush was designated an expert in park operations. He has been an Administrative Supervisor at MNCPPC since 1995. He has been an MNCPPC employee for 32 years and was a park manager prior to assuming his current position.

Mr. Bush is responsible for budgeting and management for the enterprise fund, which is a composite of facilities that are self-supporting (expected to pay for at least their operating costs through fees). Those facilities include golf courses, ice rinks, indoor tennis centers, conference centers and

some park facilities. He stated that the County operates enterprise facilities like businesses. The County operates five golf courses, and leases Gunpowder Golf Course to a private operator. The project proposed here would be the MNCPPC's first involvement in a residential golf course community.

Mr. Bush stated that private/public partnerships sometimes are used to get desired facilities built where MNCPPC does not have the funding to build it, or would have to build it more slowly than would a private developer. Moreover, the private sector brings expertise and resources that MNCPPC would not otherwise have, and allows the agency to broaden the recreational resources available to the public. Evaluation of a potential private/public partnership begins at a conceptual level, where the Planning Board and staff review the general idea for the project, who the private partner is and how they would finance the project. This review normally includes several public meetings and hearings. Once the Planning Board has approved the concept, the project proceeds to more detailed submissions regarding engineering, financing and operations. This allows the Planning Board and Technical Staff to assess – with additional opportunities for public comment – whether the project would be viable for the private partner and what the risk is for the MNCPPC. For a project with a lease longer than 20 years (which is typical for a large project), the lease must be approved by the County Council after a public hearing, in addition to the Planning Board and stated that currently, no public funding is available for its redevelopment.

Mr. Bush discussed the history of the MNCPPC's ownership of Gunpowder Golf Course and stated that currently, no public funding is available for its development. He noted that the last golf course the MNCPPC built was Little Bennett, which cost about \$10 million in 1994.

Mr. Bush testified that if the development proceeds, at the end of the 40-year lease the golf course and its improvements will revert to the ownership and management of the MNCPPC. He believes that the proposed project would be in the public interest. The community would get an improved golf course and the MNCPPC would get an asset, at the end of 40 years, which it currently doesn't have in the same condition. The project would also be beneficial by accommodating the First Tee program. He opined that based on his familiarity with the site, the proposed new golf course would be much better than current conditions in terms of land use and land condition. He also stated that if

Gunpowder Golf Course were renovated, fees would increase to pay for the costs of the improvements, regardless of who was the operator.

Under cross-examination, Mr. Bush acknowledged that Little Bennett, the golf course the MNCPPC built in 1994, has seen declining use in the last several years – “suffering some of the same things as all the golf courses in the area are.” Tr. Nov. 19 at 117. When asked by the Hearing Examiner why the MNCPPC proposes a new, upscale golf course on the subject property in such a market environment, Mr. Bush stated that if the proposal were for a new golf course he might not support it, but this would be a replacement for an existing course. He stated candidly that it is very difficult to say whether the proposed golf course would succeed. It would depend on whether other golf courses come into the market and how the population changes. If people perceive it as a good value, they will come. Mr. Bush acknowledged that any private/public partnership presents some risk to the MNCPPC, but the nature of that risk depends on the terms of the lease. If the property reverts to the Commission under favorable terms, it could be a tremendous asset. Depending on the terms of the lease and whether the golf course is viable for the private operator, the MNCPPC could end up owning the golf course earlier than anticipated, and still have the land and the clean-up paid for. *Id.* at 121. He noted that financial projections, market studies and risk assessments are important elements of the Planning Board’s and the County Council’s review of such leases.

Mr. Bush rejected the suggestion by an Opposition questioner that the County could end up subsidizing the lessee if the golf course starts to lose money. Mr. Bush stated that the lease has not been negotiated, but subsidizing lack of profitability is not the agency’s approach. The operator has to be able to pay for the improvements and for operating costs. *Id.* at 123.

13. Joseph Hills, golf course designer/operator. Tr. Nov. 19 at 137-188.

Mr. Hills was designated an expert in golf course design, development, operations and management. Tr. Nov. 19 at 143. His formal training in golf course design and project management began in 1989 when he joined the western office of his father’s firm, Arthur Hills and Associates. The evidence established that Arthur Hills is one of the leading golf course architects in the world, well known for creating “signature” golf courses in beautiful settings. See Ex. 78. Mr. (Joseph) Hills worked

on the design and every phase of construction for two golf courses out west, then moved to the Washington, D.C. area and opened a sales/project management office for his father's projects in this area. In 1993 he began developing two golf courses in Maryland for which he is the managing member. As such he is responsible for every phase of development and operation, including permitting, construction and management. He designed those courses in collaboration with his father. His current responsibility is operating those two courses, Waverly Woods in Ellicott City and Blue Nash in Laytonsville.

Artery contacted Mr. Hills during the summer of 2001 to review a golf course design for the subject property that had been developed by another architect. He and his father reviewed the plans and agreed that the course as proposed was inadequate and not economically viable, primarily because there was not enough space for the holes. The proximity of some of the holes to one another and to proposed houses raised safety issues. Mr. Hills prepared a new plan, including the routing of the golf course, basic housing locations and road configurations, which was refined by the project engineers. That plan proposed putting some golf holes west of the Silverwood Tributary, which ran afoul of newly-adopted forest conservation guidelines in Montgomery County. Technical Staff established the "red line" beyond which no development could be permitted, and Mr. Hills, again in collaboration with his father, redesigned the plan in compliance with the red line and forest conservation guidelines. The new plan made more efficient use of the land by bringing the golf holes closer together, with fewer places where golf holes have houses on both sides. It took golf holes out of the northern part of the site, in the high-quality wetlands near the PEPCO lines, and placed four holes on top of the stump dump (Parcel X), where previously there were housing lots and the school site. The new plan sited two holes in the western part of the site, including one in the southern spike, as part of providing enough room for the golf course while making efficient use of the land, with less clearing, less interference from housing, and less impact on wetlands and other features. Tr. Nov. 19 at 146. That plan, with very minor refinements, is the plan presented here.

Mr. Hills testified that the golf course proposed for the subject property would be considered an "Arthur Hills Golf Course" because of his father's collaboration in the design. His father

would be the architect of record. Mr. (Joseph) Hills stated that this would be a good marketing tool, associating the course with a name that is widely recognized in the golf community . In addition, his father's involvement means that the golf course would be well-designed, in keeping with his father's track record for creating successful golf courses that are enjoyed by a cross-section of the public.

In response to concerns raised by patrons of the existing Gunpowder Golf Course, Mr. Hills described the golf course proposed here as very walkable. He described the distances between greens and tees, noting that the longest distance would be the approach to hole 10, in Prince George's County, which would be routed down into a sand and gravel mine area. He described this as a very exciting feature for a golf course – it presents a “dichotomy between the golf and the natural area, presents [a] striking visual appearance.” Tr. Nov. 19 at 151. It would put a unique stamp on the course and draw people to it.

Mr. Hills stated that one of the most important requirements for a golf course in which he and his father are involved is the feel, quality and economic success not only of the golf course but of the development surrounding it. There must be enough space to play golf without unduly interfering with the housing. They establish what they consider to be safe distances from the center of each golf hole to an adjoining property line, and in every case they have exceeded those minimum distances.

Mr. Hills observed that construction of the proposed golf course would enhance the subject property by cleaning up the stump dump area and converting that to a stabilized green area. It would turn the mined areas into a very attractive visual centerpiece, and it should improve water quality by eliminating the current sedimentation problems. Mr. Hills stated that his father has been a pioneer in the design of environmentally sensitive golf courses and is considered a leader in the field. He was the first to receive certification from the Audubon Society for an Audubon Sanctuary Signature Golf Course, and today has approximately 17 golf course with that certification. One of Mr. Hills' chief concerns in designing the golf course proposed here has been taking the greatest possible advantage of the property's environmental features, and he believes his design accomplishes that. His design also minimizes grading by laying the golf holes into the existing topography as much as possible. *Id.* at 156.

Mr. Hills acknowledged that the cost of constructing the golf course would be borne by the private developers, as would the cost of operating it. He further acknowledged that this would be a public course, and that he would need to negotiate the final terms of the use of the site with the MNCPPC. He stated that golfers would not be required to rent a golf cart if they preferred to walk, and that there would be both a junior golfer program and a discount for seniors. *Id.* at 152, 159. The goal is to create a quality, affordable golf course.

Mr. Hills noted that the pond in the center of the site would be expanded and deepened to store water for irrigation. It would be recharged by a large area that would drain into the pond, comprising about 400 acres. In addition, they proposed to drill groundwater wells to pump water into the pond as needed. Preliminary hydrological analysis indicates that wells would be able to pump the amount of water they need. This activity would require obtaining a water appropriation permit from the State of Maryland, which would be based in part on demonstrating no adverse effect on the use of nearby wells or groundwater.

On cross-examination, Mr. Hills described the distances between tees and greens in more detail. He acknowledged that many of the holes would cross over water, and there would be several bridges to cross over wetland areas. He refuted the suggestion that the proposed golf course would cost \$11 million to develop, saying that he projects the cost at about \$8 million, primarily because of costs that would be absorbed by the residential developer. He also refuted the “rule of thumb” suggested that for every \$1 million invested in a golf course the operator needs to charge \$10 in fees. Mr. Hills stated that at both of the courses he operates, the fees are lower than that formula would suggest. In this case, his budget proposes to develop the course with a fee that would be significantly less than suggested by that formula. *Id.* at 184. Mr. Hills agreed that the golf industry has become very competitive, but stressed that good projects will always do well – it’s the marginal projects that are struggling. Both of his golf courses in Maryland are thriving. He maintained that a good product, well located and marketed, will do well.

B. Technical Staff

1. Lynn Coleman, MNCPPC Trail Planning Supervisor. Tr. Nov. 19 at 57-86.

Ms. Coleman was designated an expert in land planning and trail planning. Tr. Nov. 19 at 59. She has been Trail Planning Supervisor since 1998 and has worked for the MNCPPC since 1977. During her first 25 years with the agency she was in community based planning and was responsible for packaging community based master plans for the upper portion of Montgomery County, including the Fairland area. As Trail Planning Supervisor, she is the chief planner in charge of the countywide park trail plan. She is also responsible for preparing park master plans and trail master plans, and for assuring that countywide park trail concepts are implemented at the local planning level.

Ms. Coleman distinguished between area master plans, which are approved by the Planning Board and adopted by the District Council, and park master plans, which are adopted by the Planning Board without involvement by the District Council. The latter are implemented mainly through the CIP, where money is secured to build the facilities recommended in the plan. Unlike area master plans, park master plans do not make zoning recommendations.

Ms. Coleman identified on a map the two formally designated trails in the Montgomery County portion of Fairland Park: the paved trail that links Montgomery County and Prince George's County, and a natural surface trail called the Holly Trail that the Park & Planning Department has formally designated as a public trail, which is open to horses, bicycles and hikers. She explained that a formal trail is any trail that is signed, shown on an MNCPPC map, and routinely maintained by park personnel. Tr. Nov. 19 at 63-64. These trails were recommended in the Fairland Park Master Plan. The Holly Trail was created by Technical Staff and members of a mountain-biking group, Maryland Off Road Bike Enthusiasts ("MORE").

Ms. Coleman stated that in addition to the two formal trails, Fairland Park has informal foot paths that have been created by people walking through the woods, which are called "People's Choice" Trails. They are not signed or shown on MNCPPC maps, nor are they routinely maintained, but if someone calls and says that a tree has fallen over a particular informal path, park staff will often go out

and take care of it to remove an unsafe condition. *Id.* at 64. Informal trails are sometimes located in an environmentally insensitive manner because people do not realize that they are too close to a stream, or traversing a wetland, or causing erosion on a steep slope.

The Staff Report also states that the proposed trail relocation would be addressed during preliminary plan and site plan review. When asked whether the goal stated in the Fairland Park Master Plan for the trail system can be achieved in the context of the proposed development, Ms. Coleman stated firmly, "It will be achieved. We will make sure it is achieved. And we feel that it can be achieved and we will make sure it is achieved." Tr. Nov. 19 at 67-68. When asked later whether the realignment of the paved trail would maintain connectivity, Ms. Coleman reiterated that staff "will make sure that the realignment continues connectivity." *Id.* at 72.

With regard to People's Choice trails, Ms. Coleman testified that if the park master plan recommends, as does the Fairland Park Master Plan, that informal trails be assessed for possible upgrading to formal trails, normally that decision is made at the staff level rather than by the Planning Board. In this case, Technical Staff plans to assess the informal trails in Fairland Park during preliminary plan and site plan review for the proposed development, and recommend better alignments. As a result, these realignments would receive the scrutiny of the Planning Board in addition to staff. They would also be subject to a new Trail Assessment Study process that has been developed to review informal trails. Ms. Coleman stated that the process of formalizing the People's Choice trails, with signage and maintenance, would improve their utility for the public. She hopes this process will also enhance environmental conditions.

Ms. Coleman noted that in relocating the paved trail in the southern spike, Technical Staff's preference would be to continue to use the existing bridge that is part of that trail, although they would consider a different alignment for environmental or other reasons.

Under questioning by the People's Counsel, Ms. Coleman stated that north-south connectivity within Fairland Park is currently provided on an informal trail – the formal trails only provide east-west connectivity. In conjunction with the proposed development, Technical Staff intends to establish north-south connectivity by formalizing the informal trail on a sustainable route. *Id.* at 74.

Their review of trails will encompass the entirety of Fairland Park, not just the part within the property proposed for rezoning. The present zoning application has, in effect, pushed the trail assessment forward. Technical Staff would be forced to address the trails that would be affected by the development, and would take the opportunity to review the trail system comprehensively.

Ms. Coleman noted that the trails would be relocated on public property, so MNCPPC would not require any approval from the developers. They would, however, expect the developers to pay the cost of relocating the paved trail (and removing unused sections of the existing trail) to the extent that it is moved to accommodate the development.

About the trail system losing both usability and attractiveness due to the proposed development, Ms. Coleman stated that the Opposition's concerns would be reviewed at subdivision. She emphasized that it is critical for park users to be able to travel from the Montgomery County side of the park to the Prince George's County side in an attractive, park-like environment on a well-designed, hard surface trail, and they "will do what it takes to achieve that." She also stated that Technical Staff agrees with MORE about the value of the natural surface trails, and is committed to working with equestrians and bikers to develop a natural-surface system that will provide the loop trails and connectivity. She is "hopeful" that this can be accomplished with the golf hole shown in the southern spike on the Land Use Plan. Tr. Nov. 19 at 80.

2. Piera Weiss, MNCPPC Planner/Coordinator, Tr. Nov. 19 at 223-232.

Ms. Weiss was designated an expert in land use planning and in the *Fairland Master Plan*. Tr. Nov. 19 at 231. She has been a planner/coordinator with the MNCPPC since 1989, and is responsible for preparing and implementing master plans for the eastern part of the County. In that capacity, she developed and wrote the *Fairland Master Plan* with input from staff of other divisions.

Ms. Weiss described the general process of preparing a master plan, including researching the area and conducting outreach to get input from a variety of stakeholders. She stated that the latest master plans for Fairland, Cloverly and White Oak were all prepared during the same time period. Because the 1981 master plans in that part of the County created a huge outcry about lack of community input, the 1997 plans were prepared using a specific outreach program called "Concordia." This involved substantial input from CACs that were carefully chosen to represent a broad cross-section of the community and a significant number of people. The CACs were given the opportunity to comment on Technical Staff's draft of these master plans, so that the Planning Board could see specifically

whatever disagreements the CAC had with Technical Staff. In addition, once each of these master plans had been adopted, the CAC did not disband, as usually happens, but was allowed to continue in existence to participate in implementation.

Ms. Weiss explained that Technical Staff recommended the PD Zone for the subject property because its flexibility would allow their planning goals to be met better than the existing R-200 zoning on the private property, and the process of seeking approval for the zoning reclassification and the development plan would provide the most opportunities along the way for public input, including before the District Council. Tr. Nov. 21 at 138-140. The PD Zone process created safeguards, ensuring extensive review of the project. Technical Staff also guaranteed substantial input by the MNCPPC by recommending a private-public partnership. With the MNCPPC as a co-applicant, they would really be in a position to put together the best possible plan.

Ms. Weiss emphasized that Technical Staff wanted to encourage as much single-family detached housing as possible in the planning area, and specifically at the subject property. Tr. Nov. 21 at 141. She noted that the Master Plan includes an illustration of the proposed golf course community that shows at least two residential development areas on property occupied by the Gunpowder Golf Course. See Master Plan at xv. Although the text of the Master Plan did not specifically recommend private-public land exchanges in connection with the golf course community, this illustration clearly anticipates that the development would involve land swaps. *Id.* at 143-145.

Ms. Weiss noted that the Master Plan contained a very specific recommendation for a maximum of 396 units on the subject property, with an appropriate mix of detached and attached units including MPDUs. Thus, MPDUs were not to be added on to the total number of units. As shown on the Land Use Plan, the MPDUs would consist of two different types of housing in three different locations, which is valuable for compatibility and to integrate affordable units into the development. The maximum number of units was based on a simple calculation: multiplying the 178 acres of private land on the subject property by two, which is the density per acre permitted in the PD-2 Zone. Tr. Nov. 21 at 145-146. The zoning on the private portion of the subject property at the time was R-200/TDR, which allowed three units per acre, and that was a downzoning from the previous TDR 5. The property was

downzoned again following the 1997 Master Plan to R-200, which would permit two units per acre. However, under the R-200 Zone a developer who included 15 percent MPDUs could get an additional 22 percent density bonus. Thus, under the existing zoning roughly 80 more units could be developed than the maximum recommended in the Master Plan (which is the number proposed in these applications). *Id.* at 163-164.

Ms. Weiss noted that the proposed development would have two different types of pedestrian networks: sidewalks connecting the community into the existing sidewalks off-site, and a trail system connecting each of the residential pods to each other, the school and Fairland Park. Tr. Nov. 21 at 148. Recreational facilities would also be provided, consistent with MNCPPC guidelines.

Ms. Weiss also explained the language on the inside front cover of the Master Plan that states what the document is an amendment to, as required under state law. This language states that the *Fairland Master Plan* is an amendment to the previous area master plan plus several other plans, including the General Plan. Tr. Nov. 21 at 141-142. She noted that every area master plan amends the General Plan and the master plan of highways. They should not be contradictory, but to the extent that the area master plan is more specific, it governs over the more general plan. *Id.* at 143.

Ms. Weiss reiterated the conclusion stated in the Staff Report and in the Master Plan memo that the proposed rezoning and development would be consistent with the recommendations of the Master Plan. *Id.* at 152. She further opined that the proposed development would provide public benefit by creating all the elements the Master Plan sought: a school site, non-vehicular access to Fairland Park, an expanded golf course that would be more visible from the road, restoration of extremely degraded areas of the site, improved vehicular circulation with a new road connection, and making the entire large recreational area more of a presence. *Id.* at 152-153.

Ms. Weiss also addressed Opposition contentions that the presence of the Cross Creek Golf Community a short distance to the south of the subject property would make the proposed upscale golf course redundant. She noted that the Master Plan divided the planning area into communities by making logical divisions, grouping together areas that are geographically close and use shared neighborhood roads. See Master Plan at 33. The Cross Creek Golf Community is in the Tanglewood

Community and the subject property is in the Oakfair/Saddle Creek community. The development of Cross Creek did not satisfy any of the Master Plan's objectives for the Oakfair/Saddle Creek community. Tr. Nov. 21 at 163. When the Master Plan was being written, Cross Creek was undeveloped and a golf course had not been proposed. Cross Creek may have been approved for subdivision after the Master Plan had been written but before it was formally approved. *Id.* at 167.

On cross-examination by a community member, Ms. Weiss testified that the concept of a golf course community on the subject property was probably raised for the first time in 1994, at a meeting of the CAC at which property owners were invited to come and present their ideas for their property. At that time a member of the Gould family, which owns much of the private property, presented the golf course community concept.

3. Mary G. Dolan, Environmental Planning, MNCPPC. Tr. Nov. 21 at 3-54.

Ms. Dolan was designated an expert in environmental planning. She has been with the MNCPPC 11 years and is a master planner/supervisor in the environmental planning unit. She and her staff were responsible for reviewing the present zoning applications to determine conformance with the environmental recommendations of the Master Plan, the Environmental Guidelines and associated forest conservation requirements. Ms. Dolan testified that while she personally has been involved in this case for only the last few months, environmental staff at the MNCPPC have been reviewing this project for the last ten years. She stated that this project has received more scrutiny than most rezoning applications. The Applicants have done more field work and provided more information than is done in most cases.

Ms. Dolan confirmed the conclusion in the Environmental Staff Memo that the proposed development would satisfy the zoning test for preventing soil erosion and preserving natural vegetation, would satisfy forest conservation requirements, and would satisfy the environmental objectives stated in the Master Plan. Tr. Nov. 21 at 7. She stated that in making this recommendation, staff considered the construction of a single-family residential development, the upgrading and expansion of the public golf course, the provision for a school site, the restoration of degraded areas and the protection of both the stream valley buffer and forest conservation areas as parkland. *Id.* at 27.

Ms. Dolan acknowledged, as stated in the Environmental Staff Memo, that it has been difficult to fully satisfy the Master Plan recommendation to keep all elements of the golf course outside of the stream buffer. She identified, on the Land Use Plan, the 29.5 acres where the golf course would encroach on the stream buffer and the roughly 2.5 acres where residential development would encroach. *Id.* at 8-12. She explained that Environmental Staff has worked with the Applicants to reduce the impacts on the stream buffers as much as possible given the current level of information. However, at the preliminary plan and site plan stages more detailed information would be available, specifically a grading plan, which would allow adjustments to the grading or to particular lots to “preserve a little more forest here, a little more stream buffer there.” *Id.* at 9. She opined that the proposed rezoning substantially conforms to the Master Plan recommendation that the golf course be located outside the stream buffers. *Id.* at 10. She also opined that the development as proposed would comply with the Master Plan recommendation that the watershed of the McKnew Tributary, which basically includes the entire subject property, should be treated as an environmental restoration area. *Id.* at 15-17.

Ms. Dolan described the current condition of the stream buffers in various parts of the site. In the southern spike and slightly to the east in Prince George’s county, the Silverwood Tributary stream buffer is in a relatively undisturbed state, surrounded by a nice hardwood forest. On the existing Gunpowder Golf Course, the stream buffer has been disturbed quite a bit and the forest is fragmentary. North of the existing golf course, in the area formerly mined for sand and gravel, the stream is interrupted by the sand and gravel wash ponds. The wetlands north of the mining area are in pretty good condition but have had flooding problems. On Parcel X the stream buffer has been severely disturbed and degraded. Immediately north of Parcel X is a relatively high-quality piece of the gas pipeline right-of-way. North of that, the forest becomes much higher quality as it joins McKnew Park. *Id.* at 14-15.

Ms. Dolan stated that in conjunction with the proposed development, restoration would be carried out in the stream valley buffer areas that have been degraded, to the extent that the golf course operation allows it. She noted that the project would include “environmental measures and stormwater retrofit and/or stream enhancement measures to help correct existing problems,” as recommended in

the Master Plan. *Id.* at 17. “Environmental measures” would primarily consist of stream buffer restoration. The stormwater management facility proposed to capture run-off from the adjacent industrial area would constitute a stormwater retrofit. The former mining areas and Parcel X would be stabilized, at a minimum, and some restoration would take place on Parcel X. Ms. Dolan acknowledged that some clean-up of Parcel X would be required under State law, with or without the development proposed here. She added, however, that staff expects a higher level of improvement than would be achieved by simply covering the site with a membrane and a small amount of fill. They expect that in connection with the proposed development, some of the materials would be removed, the contents of the landfill would be examined thoroughly, and some degree of reclamation would take place depending on whether it would be less injurious to keep the materials there or to remove them. *Id.* at 18-19.

Ms. Dolan opined that the proposed development would also comply with the Master Plan recommendation to add stream buffer and forest conservation areas to parkland. *Id.* at 20. She noted that most of the stream buffer and a considerable amount of forest would be added to parkland, as shown on the Concept Forest Conservation Plan, Ex. 32(d).

In response to a question raised by community members, Ms. Dolan explained that the entirety of the southern spike was included in zoning application G-813, instead of just a small portion surrounding the proposed golf hole, because forest conservation law requires that whenever a portion of a lot or parcel is proposed for disturbance, the entire parcel must be included. That requirement was designed to prevent developers from saying they were developing only a small area, rather than a whole parcel, to reduce their forest conservation obligations. *Id.* at 21-22.

Ms. Dolan opined that no environmental features exist that would preclude the relocation of the paved trail in the southern spike.

Ms. Dolan observed that the Master Plan includes an illustration of the golf course community proposed for the subject property that shows a golf hole in the southern spike, like the current plan, plus two residential cul-de-sacs and part of the golf course extending onto park property near the Silverwood Tributary. She described the portion of Fairland Park near the Silverwood Tributary as a beautiful, upland hardwood forest that includes the stream and stream buffer, a considerable area

outside the stream buffer, and a lot of steep slopes and valuable habitat. *Id.* at 26. Part of this area was originally included in the area proposed for rezoning, and Technical Staff lobbied hard to have it excluded from the application entirely, to maintain it as a large, contiguous block of high quality forest and protect water quality in the Silverwood Tributary. *Id.* at 53-54.

Ms. Dolan also opined that the PD Zone would achieve the policy goals of the Master Plan better than the underlying Euclidean zones. When land is developed under a Euclidean zone, stream buffers and forest conservation areas often are preserved through a conservation easement rather than through dedication as parkland. Because such easements often run through many individual lots, they become very difficult to enforce. The PD Zone would facilitate getting those areas into public ownership, where they can be managed as parkland. *Id.* at 27-28.

Finally, Ms. Dolan opined that the proposed golf course community would have less negative impact on the stream buffers than current conditions, because of the reclamation and stream restoration proposed for Parcel X, the mining areas and the existing golf course. She stated emphatically that the new golf course would result in less environmental degradation than the existing course because it would be built to modern standards, with storm water management facilities and enhancements to the stream buffer.

4. Joel Gallihue, MNCPPC Community-Based Planning. Tr. Nov. 17 at 48-56; Tr. Nov. 19 at 232-234.

Mr. Gallihue was designated an expert in land planning. Tr. Nov. 19 at 235. He was the author of the Staff Report in this case, Exhibit 41, which was compiled in part based on input from other members of Technical Staff including Piera Weiss and Mary Dolan. Mr. Gallihue testified on a limited number of topics, at the request of the Hearing Examiner.

Mr. Gallihue first identified Exhibit 48, a vicinity map that shows the boundaries of Fairland Recreational Park as well as the subject property. He testified that Exhibit 48 shows planimetric data including topography, the footprints of existing buildings, and the location of nearby roads. He identified the active recreation portion of the park, which includes the “southern spike” of the subject property. He pointed out the location of the existing paved path through the portion of the park south of the golf course and the new location proposed for that path in conjunction with the proposed development.

Mr. Gallihue also testified concerning the element of the purpose clause for the PD Zone that provides for “a balanced and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan.” Code § 59-C-7.11. He noted that the language in the Zoning Code regarding commercial developments refers to two different size categories, both of which are larger than the development proposed here. Based on this language, Technical Staff interprets the provision for convenience commercial uses to be optional, not mandatory. He also noted that using the rate provided for the smaller of the two categories listed (developments with more than 500 dwelling units), the proposed development would be able to have about 4,000 square feet of convenience commercial uses. He opined that this small amount of commercial development would not result in a “balanced and coordinated” mix of uses. He also opined that the convenience of the residents would be better served by *not* having such a small amount of commercial uses within the development, because it would be unlikely to be financially viable and would end up as vacant property. Tr. Nov. 19 at 234-235.

Mr. Gallihue also elaborated upon some of the conclusions in the Staff Report. He stated that the proposed development would satisfy the component of the PD Zone purpose clause regarding encouraging a maximum of social and community interaction in several ways. Tr. Nov. 21 at 175. It would change the isolation of the existing Saddle Creek neighborhood immediately west of the subject property by connecting it to the new development. It would provide a vehicular connection across the county line, linking two parts of what is really one community and providing more balanced access options. It would provide the location for a community school that would be within walking distance for many students and would serve as a focal point, bringing the community together. It would increase recreational options for the Saddle Creek community by providing pedestrian linkages to Fairland Park, thereby drawing the golf course amenity up into the community. In addition, the golf course would create a distinct visual identify for the community, unifying the neighborhood. *Id.* at 177.

C. Opposition's Case in Chief

1. John Parrish, naturalist. Tr. Nov. 21 at 55-120.

Mr. Parrish was designated an expert in native plant life of the Maryland Piedmont Region, over the objection of counsel for the Applicants and the People's Counsel. Mr. Parrish lacks formal academic training, but a lengthy voir dire demonstrated to the Hearing Examiner's satisfaction that in 28 years of extensive field work, Mr. Parrish has amassed a great deal of expertise about the plant life of this region. In addition, he presented two letters in support of his status as an expert. In one letter, then-Council member, now Planning Board Chairman Derick Berlage, thanked Mr. Parrish for his insight and expertise in discussing the environmental value of Class 1 properties in the *Legacy Open Space Master Plan*. See Ex. 81. In the other, Jeffrey Zyontz of the MNCPPC thanked Mr. Parrish for conducting a survey of rare, threatened and endangered plants, noting that six of his colleagues had taken the opportunity to learn from Mr. Parrish in the field. See Ex. 82.

Mr. Parrish is Vice President of the Maryland Native Plant Society, an organization with more than 500 members. Tr. Nov. 21 at 65-66. He testified in this case on behalf of the Gunpowder Golf Club. *Id.* at 64. Mr. Parrish is very familiar with portions of the subject property that remain in a substantially natural state, having hiked through them many times over a number of years. During the 1996 growing season he surveyed (under contract to the MNCPPC) all county parks, including McKnew Local Park, for rare, threatened and endangered plants and significant habitats. In so doing he became very familiar with the native plants in the northern portion of the subject property, which contains a continuation of the forest located in McKnew Local Park. Tr. Nov. 21 at 59-60, 73.

Mr. Parrish opined that the proposed development would conflict with the *General Plan Refinement of the Goals and Objectives for Montgomery County*, approved and adopted in 1993 (the "General Plan"). He noted that the General Plan cites the State Planning Act, Article 66B, Section 3.06 of the Maryland Code, which requires the implementation of a "sensitive areas element" designed to protect environmentally impacted areas. Sensitive areas include streams and their buffer areas, habitats of threatened and endangered species, and steep slopes. See General Plan at 19. The General Plan also states that its environmental provisions seek to (a) manage the impacts of human

activity on the environment, and (b) conserve natural resources to maintain a stable and healthy ecosystem. See General Plan at 67.

One of the particular concerns discussed in the General Plan is the importance of protecting wetlands. See General Plan at 68. Mr. Parrish noted that the proposed Land Use Plan would result in deforesting currently forested wetlands to accommodate fairways for the golf course, and deforesting areas of stream buffer. He stated that these effects would be counter to the objectives stated in the General Plan to maintain water quality and wildlife habitat. He maintained that these impacts would also be counter to the Anacostia Restoration Agreement, of which the streams on the subject property are a tributary, to increase and repair riparian buffer. Tr. Nov. 21 at 83.

The General Plan describes the detrimental impacts of urbanization and suburbanization on the natural environment, including disrupting the natural balance of plant and animal life and displacing certain species. It notes that the preservation and replacement of the County's forests has become an important issue. Historically, the County was initially deforested during the 19th century for agricultural purposes. Forested lands had increased by the 1960s, but more recent suburbanization has reduced the amount of forested lands to 19th-century levels, and Montgomery County now has one of the lowest amounts of forest cover in the Washington metropolitan area. Mr. Parrish described the proposed project as "a great example of suburbanization reducing forest cover." Tr. Nov. 21 at 83. He noted that the project would conflict with several specific environmental objectives stated in the General Plan:

Mr. Parrish also concluded that the proposed development would be inconsistent with the *Fairland Master Plan*. Tr. Nov. 21 at 88. He argued that the scope and scale of the project proposed here contradict the Master Plan's environmental goals and are not necessary to achieve its housing and other objectives. *Id.* at 91.

Mr. Parrish described internal inconsistency in the Master Plan, which recommends development of a golf course community, while espousing goals of environmental conservation and specifically recognizing that the subject property – specifically the stream valley between McKnew Local Park and Fairland Park – contains a very diverse and unusual plant community worthy of protection as

park land. See Master Plan at 19, 48, 119, 140. Based on his observations while walking around the publicly-owned portions of the subject property, Mr. Parrish confirmed that the subject property has plant species that are unique in this County. He observed that the flora on the privately-owned portions of the site are likely to have the same vegetation, given the identical geology and the observations he made looking into the privately-owned land.

Mr. Parrish pointed out that the Master Plan specifically recommends using the PD Zone to achieve “an improved golf course design located outside the stream valley,” Master Plan at 47, and that the golf course proposed here would not comply. He emphasized that tearing down existing forest, for example the high priority forest in the southern spike, means eliminating a resource that functions well with respect to helping water quality and maintaining native bio-diversity. “You can’t replace a forest that’s been forest for hundreds of years and thousands of years and have that web of life and bio-diversity associated with it.” Tr. Nov. 21 at 103.

Mr. Parrish rejected the contention raised in cross-examination that the existing forest on the subject property is very fragmented, particularly in the area of the existing golf course. He stressed, instead, that small areas of forest and even individual trees on the existing golf course are connected to the larger expanse of forest west of the subject property, and that those connections, albeit thin in some places, are important to the plants and animals that depend on them. Tr. Nov. 21 at 107-108.

Mr. Parrish testified on cross-examination that he did not participate in the *Fairland Master Plan* process. He endorses in part the Master Plan’s recommendations, but feels that they do not go far enough to meet the Master Plan’s own objectives. *Id.* at 110-111. He acknowledged that he does not know enough about the County’s forest conservation requirements to say whether development of the privately-owned portions of the site under the current zoning would result in more or less forest conservation. *Id.* at 117.

2. Ernesto Tamayo, Tr. Nov. 17 at 23-33.

Mr. Tamayo is a representative of the Greencastle Lakes Community, 822 homes located on the west side of the golf course and the park. He submitted 230 signatures in opposition to the proposed development. Mr. Tamayo stated that tax dollars were spent only 3 or 4 years ago to build the

park and should not be wasted. He argued that a new golf course and additional homes do not justify cutting down the beautiful trees in that park, which people enjoy. He is also concerned that the affordable \$14 fee to play the existing golf course will increase if the proposed plan goes through. He points out that there is already another a golf course on the south side of the existing golf course. He argues that the Master Plan does not call for this type of land use on the property, and certainly doesn't call for a golf course as big as the one proposed in this plan.

Mr. Tamayo described the increasing traffic problems the area is facing, which led to the current project to create a bypass at the intersection of Route 198 and Rte. 29. He expressed concern that congestion will be exacerbated by the 1000 additional cars this project is expected to bring into the area. He suggested that housing development could take place in the northern part of the site, without disturbing the park or the golf course. Finally, he urged the District Council to act in a democratic fashion and consider the will of the people.

3. Nam Wan Taek, Tr. Nov. 17 at 34-40

Mr. Taek is a local resident speaking on behalf of a group of local Korean-Americans, most of whom are elderly, who use the existing golf course every day. He expressed an understanding for the need to renovate the golf course but is concerned that afterwards the cost of using the course will become too expensive. He points out the health benefits the course provides in terms of daily exercise, and stated that if the course were no longer affordable, the older people who now play it every day would be sitting home in front of the television instead of getting exercise, and would end up with health problems. The resulting health care costs would fall on the taxpayer. Mr. Taek stated that we are fortunate in this country to have nature available to us and we should preserve it. He spoke of how beautiful the current setting of the Gunpowder Golf Course is, with trees and wildlife, and said that there are streams so clean a person could drink from them. He voiced a concern that continued rezoning would lead to one big city from Washington, D.C. to Columbia and Baltimore, with all the trees cut down.

4. Anthony Norris, Tr. Nov. 17 at 40-46, 54-60.

Mr. Norris is a resident of the Greencastle Development and lives across the street from the park entrance. In addition to the points made by Mr. Taek and Mr. Tamayo concerning traffic and

affordability, Mr. Norris cited a need for green space and stated that he is disheartened by the pace at which it is being replaced by new homes. A new development in Prince George's County called Cross Creek is only partially complete, and already the additional traffic on Old Gunpowder Road has added 10 to 15 minutes to his commute to the Metro. Mr. Norris points out that the desirability of many communities is judged by the availability of green space. He moved to Montgomery County because it is progressive and has lots of green space. He and several of his neighbors would have to consider moving out of the County if development in their area continues.

Mr. Norris noted that the people who currently use Gunpowder Golf Course are not asking for improvements – they like it the way it is. People who want a fancier golf course can go to the semi-private course in Cross Creek, less than 5 miles away. He can walk or ride his bicycle from his house to the park, and enjoys riding around the park, seeing the lovely little stream with a little bridge, and all the wildlife. He is distressed that any portion of the park, which is only 3 or 4 years old, would be cut down to build more homes.

5. Mary Angevine, Tr. Nov. 17 at 60-72.

Ms. Angevine spoke as an individual and also as a member of Trail Riders of Today (TROT), a trail preservation organization with 900 members, most of whom live in Montgomery County. She lives on Old Gunpowder Road in Beltsville, Maryland. She spoke in opposition to both the development plan and the rezoning. She mentioned that in addition to the paved trail, the park has a terrific circuit of natural surface trails, as well as delightful flora and fauna. Ms. Angevine raised a concern that the PD Zone allows commercial uses, and that if the proposed zoning is granted, the developers could put commercial uses in there. She noted that part of the purpose of the PD Zone is to preserve and take the greatest possible aesthetic advantage of the trees, which is what the neighborhood is fighting for. She testified that in her view, this project cannot satisfy the finding called for in the PD Zone that the development is proper for the comprehensive and systematic development of the County, because there are already many MPDUs in the area, and there is ample private property that can be developed with fine homes. This development would mean the loss of a well used and loved community facility.

Finally, Ms. Angevine observed that some of the land that would be included in the rezoning was purchased with program open space funding from the State. As a result, it cannot be exchanged without state approval, and must be exchanged for land of equal value. Ms. Angevine read a letter from the Maryland Department of Natural Resources stating that Montgomery County had not yet sought the necessary approval.¹³ See Ex. 49.

6. Austin Steo, Tr. Nov. 17 at 72-99.

Mr. Steo lives across the street from the park and spoke as a representative of MORE – Mid-Atlantic Off Road Enthusiasts – a mountain bike club that helps to maintain trails in about 21 different parks in both Maryland in Virginia. MORE has done a significant amount of work on the trails in Fairland Park, and was given a certificate of appreciation for its work.

Mr. Steo stated that Fairland Park is the only park in the eastern part of the County with a significant number of trails available to recreational users. MOVE is specifically opposed to how the plan affects the trail system in the southern part of the park, because the development would remove a loop that links Fairland Recreational Park in Montgomery County with Fairland Regional Park in Prince George's County. Tr. Nov. 17 at 79-80. There are also many heavily used, natural surface trails that would be affected by the proposed development. Mr. Steo described the developers' plan to "relocate" the paved trail as a fix that would not take into consideration the wholeness of the trail system and the environment.

Mr. Steo presented a draft copy of the Master Plan for Fairland Park, 1991, which says that trail alignments need to be carefully planned so as to provide a connection to the recreation facilities, provide a natural experience, yet not impact the natural resources within the conservation or natural areas. He maintained that the proposed development would have a severe impact on the unique resources of the trails, the connectivity of the park, the length of the trail system, and the natural resources.

¹³ As explained later by counsel for the MNCPPC, the County is aware of this requirement and intends to seek state approval for the proposed land exchange at the appropriate time, post-zoning.

Mr. Steo argued, further, that the proposed development would not be consistent with the objectives of the Master Plan. He stated that the development would destroy trails that implemented the Master Plan's recommendation for a multi-use trail to support a regional recreational bikeways network. He noted that the Master Plan calls for larger than normal stream buffers for this park, to protect remaining forest cover and to expand forest cover where possible. He observed that the developer has pulled the plan away from the Silverwood Tributary, demonstrating the creativity to make adjustments which can make the plan fit into the natural environment of the park. He stated that while the Master Plan refers to the development of a golf course community in this area, it does not present a design for what the community would look like. The only map indicates that the expanded or improved golf course would go to the north. He suggests that this means the drafters of the Master Plan did not intend for the plan to affect the existing park.

Mr. Steo also submitted a map of the natural-surface trails in the southern part of Fairland Park, which he prepared over a period of time, starting in 1998, using a Global Positioning System unit. See Ex. 51. Reviewing maps of the proposed development, he stated that one area proposed for relocation of the paved trail is too wet to put in a trail. MOVE has suggested relocating a natural-surface trail that currently exists in that area because of the wet conditions. Mr. Steo also noted that in addition to relocating the trails, clearing trees for the golf hole that would be in the southern spike would remove the tree cover and the view that people enjoy when they use the trails.

7. Charles Gregory Nolan, Tr. Nov. 17 at 103 - 130

Mr. Nolan lives at 4318 Josephine Avenue in Beltsville, Maryland. He is a regular player at Gunpowder Golf Course and objects to the proposed development because it would take away a well-loved community facility and replace it with a fancier, more expensive golf course that the current players would not be able to afford. Mr. Nolan raised a host of objections to the present applications, including the use of property purchased with program open space funds, which he described as swapping good land for bad; the financial viability of an additional upscale golf course within two miles of the Cross Creek Golf Course and not far from another golf course, Patuxent Green in Prince George's County, both of which are struggling financially because people are not willing to pay their fees; and the

failure of the proposed plan to satisfy a primary Master Plan objective of having an improved golf course outside the stream valley. He also raised questions as to whether the taxpayers or the developer would pay the cost of reclaiming the quarry, cleaning up questionable waste and doing the construction; whether the 40-year lease discussed at other meetings on this plan would be legal; how the stump dump would be cleaned up and how much public money would be paid for it; why the homes couldn't be built next to the golf course instead of having a whole new golf course with homes interspersed among the holes; whether there would be a transition plan for the golf course during construction; how the petroleum pipeline running through the property would be dealt with; and what the impact would be of the ICC.

Mr. Nolan testified that while Prince George's County has approved the residential component of the project that would be in Prince George's County, it has not approved the golf course design. Citing a dangerous potential for spectators and players at ball fields that are popular for soccer and football, he pointed out the proximity of the proposed driving range to existing ball fields in Prince George's County.

Mr. Nolan observed that Gunpowder Golf Course is very walkable – golfers do not need to incur the expense of renting a cart, and get plenty of exercise walking from one hole to the next. In reviewing the new golf course proposed as a replacement, Mr. Nolan found that the distances from one tee to the next were too great to really encourage anyone to walk.

Mr. Nolan stated that there is an opportunity here for a first class development adjacent to the existing golf course, with walking and biking access to Fairland Park. The developers could contribute to improving Gunpowder Golf Course and "stop trying to take parkland from the community." Tr. Nov. 17 at 125.

8. Thomas Milligan, Tr. Nov. 17 at 131-

Mr. Milligan lives at 143804 Old Gunpowder Road, Beltsville, Maryland and is the current operator of Gunpowder Golf Course. He stated that he spoke not in his individual capacity, but as a representative of the Gunpowder Citizens Association, of which he is Vice President. He also presented a letter in opposition from the Burtonsville Umbrella Regional Team ("BURT"), an organization of area

citizens' and homeowners' associations. See Ex. 54. The Gunpowder Citizens Association covers a bi-county area and is a member of BURT.

Mr. Milligan stated that his organization has concerns about inconsistencies with the Master Plan and the lack of community input in the project. He stated that the area has terrible traffic problems and most of the intersections are failing, so additional cars would make the situation worse. He also questioned whether the current water and sewer system could handle the potential increase in usage.

9. Anne Lehan.

Ms. Lehan lives in a related school district, and her children would attend school with the children living in the proposed development. She offered testimony on behalf of herself and a friend, Connie Shaw. Ms. Lehan and Ms. Shaw support previous opposition statements concerning traffic and challenging the need for an additional golf course in the area. Ms. Lehan stated that she believes the community has been interested in having an upscale community in the neighborhood to have a strong PTA presence and fewer transient residents. However, Ms. Lehan and Ms. Shaw do not believe that the golf course community proposed here, with its own private community center and pool, would integrate well with the existing community.

Ms. Lehan's main concern is the burden the projected estimate of 200 new students would place on the already overcrowded local schools. She pointed out that although the developer is providing land for an elementary school, someone will have to pay to build and operate the school. Until such time as a new school could be built, the estimated 100 new elementary students would have to be absorbed into the existing area schools. Burtonsville Elementary School is already overcrowded and is using portable classrooms. The local middle school is already under consideration to have its boundaries re-evaluated because of its overcrowding. Ms. Lehan also voiced concern over the cost to taxpayers for the road projects involved, noting that the impact fees paid by the developers would not be enough to cover the cost of new schools and roads.

10. Ronald Smith, Tr. Nov. 21 at 191-214.

Mr. Smith is a local resident and President of Gunpowder Golf Club Players Ltd., an organization of about 300 members that was formed in 2001 to oppose the development proposed here. He presented a petition in opposition to the proposed development with over 1,000 signatures. Tr. Nov. 21 at 192. Mr. Smith testified that the Gunpowder Golf Course is heavily used by golfers who cannot afford the higher fees at many golf courses, and that nothing can replace it. He advocated upgrading the existing golf course, with a modest increase in user fees to cover the costs, and stated that the MNCPPC property manager rejected a proposal by the current operator of the course to do just that in August, 2001, telling him to take his ideas to the developer. *Id.* at 200.

Mr. Smith pointed out that any swap or conversion of Program Open Space funded parkland must be approved by the State of Maryland, and argued that the State should be a party to these rezoning applications because part of the site cannot be developed without state approval. *Id.* at 193. He argued that the State would not approve the land swaps proposed, because the County would be exchanging valuable park land for degraded property of lower value.

Mr. Smith argued that the Master Plan did not recommend a development that expanded the golf course beyond its current borders, nor did it recommend private/public land exchanges.

Mr. Smith stated a fundamental objection to any changes to Fairland Park, and maintained that the proposed development would waste taxpayer money that was spent in recent years, for example in creating a hiking/biking trail connecting Montgomery and Prince George's Counties. He also asserted that the proposed golf course would not be financially viable, given the heavy competition in the golf course industry today, and questioned whether the MNCPPC had adequately investigated the risks. Mr. Smith cited several examples of golf courses in this region that have failed in recent years, with the golf course property then converted to housing, including Greencastle Estates, across Greencastle Road from Fairland Park; Turf Valley in Ellicott City; and Glendale Golf in Prince George's County. Tr. Nov. 21 at 203-204. He raised the specter of the subject property becoming entirely home sites if the golf course were to fail.

11. Roger Kaufman, Tr. Nov. 21 at 214-220.

Mr. Kaufman is a resident of Laurel, Maryland and a frequent golfer at the Gunpowder Golf Course. He first stated that he was asked to submit, on behalf of a group of Korean-Americans who play at Gunpowder Golf Course, several articles regarding Montgomery County's efforts to assist the Korean-American community. Mr. Kaufman described himself as an avid golfer and said he is not against building new golf courses or new housing. However, he is opposed to this development. He argued that the current operator of the Gunpowder Golf Course has not been in a position to make any substantial improvements because he has been given only one-year leases. Without some assurance that he would be able to get a return on his investment, he could not make the improvements that have been needed. Tr. Nov. 21 at 217.

Mr. Kaufman stated that no effort has been made to contact current Gunpowder players, and that a little bit of courtesy could have reduced the level of animosity that has grown toward the project. Mr. Kaufman also took issue with the testimony by Mr. Hills, the golf course designer, that the proposed course would be walkable. In addition, he stated that in comparing the property ownership before and after the proposed development, some 40 acres going into public hands should not be counted because they are undevelopable wetlands.

D. People's Counsel

The People's Counsel, Martin Klauber, made a closing statement in which he recommended that the present applications be granted. Tr. Nov. 21 at 231-236. Mr. Klauber noted that while a master plan is generally considered no more than a guide or recommendation, in the case of the PD Zone the Zoning Ordinance requires compliance with the applicable master plan. This elevates the Master Plan to a basic criterion of the zone. Mr. Klauber also pointed to the history of these applications. The Master Plan included an illustration that showed a golf course community similar to the one presented here, and recommended a golf course community for this site. The County Council has twice adopted an Annual Growth Policy that included a special provision for this project. The County has agreed to change the sewer and water categories if the project is approved. Mr. Klauber

described each of these as evidence that the proposed development would be in the public interest. Specific elements of public benefit include the benefit to hundreds of school children from having a new school site made available, and the opportunity for a review and possible improvement of the informal, People's Choice trails in Fairland Park. Mr. Klauber also noted that from the time the County purchased the Gunpowder Golf Course, it has always been slated for improvement and change, it was just a question of when.

V. ZONING ISSUES

As a threshold matter, the contention by the Opposition that the State of Maryland should be a party to these proceedings because of its approval authority over disposal of property purchased with Program Open Space funds must be refuted. No legal authority was presented to support this contention, and it fails on its face. The Zoning Ordinance specifies that an application for a local map amendment may be made by "any governmental agency or a person with a financial, contractual or proprietary interest in the property. . . ." Code § 59-H-2.1. The MNCPPC qualifies as an applicant for a local map amendment in both categories – as a governmental agency and as a party with a proprietary interest in the property in question. The record supports an expectation that the necessary state approvals will be obtained in the normal course of events if the rezonings are granted and development proceeds.

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term "Euclidean" zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height. A floating zone is a more flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone,

i.e., it satisfies the purpose clause for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications must be specified on a development plan, however, to assure appropriate zoning oversight by the District Council. Pursuant to Code §59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. Accordingly, the evaluation of zoning issues must begin with the development plan and proceed to the requirements of the zone itself.

A. The Development Plan

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Code, together with the grounds for the Hearing Examiner's conclusion that the evidence in this case supports all of the findings required for approval.

- (a) ***That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.***

The purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans. . . . it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

Code § 59-C-7.11.

In the present case, both the Planning Board and Technical Staff opined that the proposed Development Plan is consistent with the goals and objectives of the *Fairland Master Plan*, and the Hearing Examiner agrees. The Master Plan specifically recommends development of the subject property, under the PD Zone, with the land uses proposed in the present applications: a golf course community with primarily single-family detached homes, arising out of a public/private partnership. See Master Plan at 47. The Master Plan also lists a series of specific elements to be considered at zoning. See *id.* at 48. The proposed Development Plan would satisfy all of these elements at least in substantial part, and many of them completely: the number of units would be limited to the maximum stated in the Master Plan, with a mix of units that corresponds appropriately to the priorities stated in the Master Plan; MPDUs would be distributed in three locations in the development and designed in a manner likely to facilitate their integration into the community; Cedar Tree Drive would be extended to connect with Old Gunpowder Road in Prince George's County, providing improved access for the existing Saddle Creek community as well as the new development; substantial areas of no disturbance would be preserved; trails and sidewalks would provide non-vehicular access to Fairland Park for both the new development and the existing Saddle Creek community; common open space for residents of the new development would include tot lots, a swimming pool, tennis courts and a community building; and an 11-acre site would be provided for a public elementary school, a size that MCPS considers adequate for that purpose.

The proposed Development Plan would not comply fully with the Master Plan's environmental recommendations, particularly the recommendation to develop a new golf course design outside the stream valley. However, the Hearing Examiner is persuaded, based on the thorough analysis provided by Environmental Staff (see Part III.H above), that despite incursions into the stream

buffers, the environmental benefits provided by the proposed Development Plan constitute substantial compliance with the Master Plan's goal of protecting the sensitive environmental resources on this site. A number of factors weigh heavily in this conclusion. The area covered by the Development Plan excludes entirely – and thereby protects from development – the Silverwood Tributary and its stream valley, which is the most sensitive and valuable portion of the potential redevelopment area addressed in the Master Plan. Many of the encroachments on the stream buffer would take place on the fringes of buffer areas that are already degraded, and many of the encroachments for the golf course would preserve shrub/scrub vegetation, which provides better water quality protection than total clearing. The Applicants have proposed environmental reclamation to offset stream buffer encroachments, including creating additional wetlands on site, restoring stream banks in certain locations, reforesting degraded stream buffers where possible, preserving several tracts of high quality, upland forest outside the stream buffers, and installing a stormwater management facility to capture run-off from the adjacent industrial park in Prince George's County. Many of these improvements would be in the Applicants' best interest, to enhance the quality of the environment for golf course users and residents. Nonetheless, these steps would be of substantial public benefit. Carrying out the Development Plan would also accelerate large-scale cleanup of degraded former mining areas, and would likely result in a higher level of environmental reclamation on Parcel X than would otherwise be accomplished.

Opposition evidence made a poignant case for the preservation of all of the environmentally valuable resources on the subject property. It might be possible, as the Opposition's environmental expert suggested, to design a different golf course community that would remove fewer trees and protect more stream buffer, while still meeting most of the Master Plan's land use goals. However, the District Council's responsibility is to fully and fairly evaluate the applications that are before it, not to compare them to theoretical alternatives. Environmental Staff drew the powerful conclusion that, on balance, the Development Plan proposed here would result in an environment on this unique site that is superior in many respects to a development plan that strictly complies with all current environmental standards and guidelines, and the Hearing Examiner agrees. See Environmental Memo at 2.

The Development Plan is also in substantial compliance with the General Plan. For the reasons stated above, on balance the development would serve the environmental preservation goals stated in the General Plan. Moreover, because the area Master Plan amends the General Plan, compliance with the area Master Plan effectively demonstrates compliance with the General Plan.

Based on the preponderance of the evidence, the Hearing Examiner concludes that the proposed Development Plan would be in substantial compliance with the use and density indicated in the Master Plan and would not conflict with any other applicable county plan or policy.

- (b) ***That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.***

1. Purposes of the Zone

The purpose clause for the PD Zone, found in Code §59-C-7.11, is set forth in full below, with relevant analysis and conclusions for each paragraph following.

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.

Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.

It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.

It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.

Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.

It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.

This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

1st paragraph: Master Plan implementation. As discussed under (a) above, the proposed development would be in substantial compliance with the *Fairland Master Plan*. Moreover, testimony from several witnesses demonstrated that the proposed development would allow a higher degree of compliance with the Master Plan than development under the existing zoning: the existing R-200 zoning, with bonus density for MPDUs, would allow development of roughly 80 more homes than the maximum permitted under this Development Plan, would be unlikely to result in dedication of a public

school site, and would not provide equivalent opportunities to preserve high-quality environmental resources and promote environmental reclamation. See Part III.G. above. Accordingly, the requested reclassification would comply with the first element of the purpose clause by allowing implementation of applicable Master Plan objectives more closely than the existing zoning would allow.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. As Technical Staff and the Applicants' land planner testified, the proposed development would achieve these objectives in several ways. It would relieve the isolation of the existing Saddle Creek neighborhood immediately west of the subject property by connecting it to the new development. A network of sidewalks and trails would connect each of the neighborhoods on the subject property to other neighborhoods, the school site, on-site recreational facilities and Fairland Park. It would provide a vehicular connection across the county line, linking two parts of what is really one community and providing more balanced access options. It would provide the location for a community school that would be within walking distance for many students and would serve as a focal point, bringing the community together. It would increase recreational options for the Saddle Creek community by providing pedestrian linkages to Fairland Park and drawing the golf course amenity up into the community. The character of the development would revolve around the large areas of open space created by the golf course, forested areas, stream valleys and proximity to Fairland Park, all of which would give the community a very distinct visual character and identity. Moreover, the Hearing Examiner is persuaded by the analysis provided by Technical Staff and the Applicants' land planner that in a development of this size, commercial uses would not be appropriate or beneficial.

Third paragraph: broad range of housing types. The proposed development would contribute to providing a broad range of housing types by increasing the proportion of single-family detached housing available in the Fairland area, and by providing four different housing options on-site: single-family detached dwellings, duplexes, detached "villas" and townhouses.

Fourth paragraph: trees and grading. The proposed development would result in substantial forest clearing, an impact that would be practically unavoidable with any development at the density recommended in the Master Plan. The proposed development would comply with the County's

forest conservation requirements and would preserve several tracts of high-quality upland forest. Moreover, it would take the greatest possible aesthetic advantage of the trees preserved by building vistas around them for residents and golf course users, and by relocating the paved trail in the southern spike to preserve a forest setting for trail users. The proposed development would minimize the amount of grading necessary by fitting the golf course holes into the existing topography wherever possible.

Fifth paragraph: open space. The Development Plan would preserve substantial amounts of open space as parkland, conveniently located and available to the public. Moreover, the flexibility of the PD Zone and the design of the Development Plan would result in a very high degree of integration, both physical and aesthetic, between the residential and golf course uses.

Sixth paragraph: pedestrian networks. The Development Plan includes a system of trails and sidewalks that would tend to reduce reliance on the automobile by allowing residents to walk among the residential and recreational areas, and enabling children who currently are bussed to school from the neighboring Saddle Creek neighborhood, as well as many in the new community on-site, to walk to school.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. Taken as a whole, the Development Plan for both applications covers approximately 314 acres and therefore can be considered large scale.

Eighth paragraph, first part: safety, convenience and amenity. The proposed development would provide a maximum of safety, convenience and amenity for residents and neighbors by providing an improved local road network, a site for a neighborhood elementary school, pedestrian connections to Fairland Park, an enhanced public golf course and, for the new development, on-site recreation facilities.

Eighth paragraph, second part: compatibility. As the Applicants' land planner testified, much of the Saddle Ridge development abutting the subject property to the west, near the proposed school site, is classified under the R-200/TDR Zone. That area was developed at higher density using density transfers from up-county, and primarily contains townhouses. Areas north of the subject property contain large-lot single-family homes. The proposed development would have a small number

of duplexes abutting each of these areas, a flexible unit type that can provide a density transition from townhouses to single-family detached homes along Cedar Tree Drive, while preserving visual compatibility with single-family detached homes near MD 198. The higher-density portion of the proposed development, with villas and townhouses, would be surrounded by open space, golf course and recreational facilities, with no contiguous residential areas. In light of the extensive evidence concerning the current degraded environmental conditions on the privately-owned portions of the subject property, the evidence supports the conclusion that the proposed development would make the subject property more compatible with the surrounding area than it is under current conditions.

Ninth paragraph: three findings. The purpose clause states that the PD Zone “is in the nature of a special exception,” and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

On my reading, this element of the purpose clause does not add new requirements, but reminds the District Council of its responsibility to carefully consider whether the PD Zone would be appropriate in the location for which it is requested. The conclusions drawn earlier in this section govern the findings to be made here. Based on the preponderance of the evidence and for the reasons stated above, the Hearing Examiner concludes that present applications are proper for the comprehensive and systematic development of the County, in compliance with and capable of accomplishing the purposes of the zone, and in substantial compliance with the General Plan and Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the Hearing Examiner’s conclusion that the proposed development would satisfy each of these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an

existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher.” The subject property is recommended in the Master Plan (and classified under) the RE-2 and R-200 Zones, both of which provide for development at a density of two dwelling units per acre or greater.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The property included in LMA No. G-813 satisfies the first of these criteria, which requires that the land contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted. That standard clearly is met here, where the Land Use Plan provides for the construction of 391 units on the G813 property. The property included in LMA No. G-814 satisfies the last of these criteria, which requires that the property be recommended for the PD Zone in an approved and adopted master plan and “so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.” Code § 59-C-7.122(e). The Hearing Examiner agrees with Technical Staff that although the G814 property cannot support 50 dwelling units, because of its unique location separated from the G813 property by PEPCO power lines, development of the G-814 property as a coordinated part of the overall Development Plan is in the public interest. See Staff Report at 10.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A development with 200 to 800 units is required to have a minimum of 30 percent single-family detached units and 20 percent townhouse and single-family attached units. LMA No. G-813 falls within this category but has a mix of 87 percent single-family detached units and 13 percent single-family attached. A development with fewer than 200 units, such as LMA No. G-814, is required to have a minimum of 35 percent single-family detached units and 35 percent townhouse and single-family attached units. G814 consists of 100 percent single-family detached units.

The Applicants request waivers of the above unit mix requirements pursuant to Code § 59-C-7.131, note 1, which authorizes the District Council to waive the unit mix requirements if it finds

that “a proposed development . . . achieves goals, policies or recommendations stated in an approved and adopted master or sector plan.” The Hearing Examiner agrees with the conclusion drawn by both Technical Staff and the Applicants’ land planner that the requested waivers should be granted because the proposed development would help achieve the Master Plan recommendation to provide as much single-family detached housing as possible in the Fairland area.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but, as testified by Technical Staff, not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the tot lots, swimming pool, tennis courts and community building shown on the Land Use Plan, are permitted in the PD Zone.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, . . . the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The present applications seek the low-density category of two dwelling units per acre, in keeping with the recommendations of the Master Plan. The maximum number of units permitted under the written binding elements represents an overall density of approximately 1.3 dwelling units per acre, including MPDUs. The Hearing Examiner concludes, based on the evidence of record, that this low density level is appropriate for the subject property in light of the significant environmental constraints on the site, the recommendations of the Master Plan and the density of existing development in the surrounding area.

Section 59-C-7.15, Compatibility. As discussed in Part V.A. above, the Hearing Examiner finds that the proposed development would be compatible with existing development in the surrounding area. Moreover, the written binding elements on the Land Use Plan show that the development would satisfy the setback specifications set forth in Section 59-C-7.15, which prohibit any building other than a

one-family detached residence within 100 feet of any adjoining one-family detached zone. The Development Plan does not include a binding element that responds to the specification in the same section that no building may be constructed to a height greater than its distance from such adjoining land. However, the submitted Land Planning Report states that the development would comply with this requirement. The Land Use Plan shows that only a small number of residential lots would be adjacent to land that is recommended for single-family detached zoning, and all of the dwellings on those lots would be either single-family detached homes or duplexes designed to have the appearance of single-family detached homes. Under these circumstances, it is reasonable to expect that the building heights would comply with the Zoning Ordinance and that the Planning Board would ensure such compliance at site plan review.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. The Applicants cannot provide a precise calculation of green space at this juncture because the layout of the golf course is illustrative, and minor changes during preliminary plan and site plan review could affect that calculation. However, the golf course use virtually guarantees that open space on the subject property would vastly exceed the required 30 percent.

Section 59-C-7.17, Dedication of Land for Public Use. The Land Use Plan clearly identifies the extensive portions of the subject property to be dedicated to public use: the school site, the golf course property, non-golf-course property within Fairland Park, and property needed for roads.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Land Use Plan commits the developer to providing considerably more than the two spaces per dwelling unit (a total of 792 spaces) required on the subject property as a whole: 1,531 spaces for dwelling units plus 234 spaces for the golf course and on-site recreation center.

(c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The

extension of Cedar Tree Drive would improve the local road network, benefiting both existing and new residents of the area. Likewise, the network of trails and sidewalks would provide valuable pedestrian connections for both existing and new residents.

- (d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.***

The proposed Land Use Plan has been designed and re-designed several times in an effort to achieve a complex set of environmental goals, including preventing erosion of the soil and preserving natural vegetation and other natural features of the site. Several witnesses testified that grading would be minimized in both the residential and golf course portions of the development. The Concept Forest Conservation Plan demonstrates that both the residential and the golf course components of the development would be able to satisfy forest conservation requirements. The Land Use Plan and expert testimony establish that the development would satisfy water quality standards by protecting wetlands and many stream buffer areas, and by installing an extensive stormwater management system.

- (e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.***

A homeowners' association declaration of covenants, conditions and restrictions that has been submitted in draft form adequately and sufficiently demonstrates the intended ownership and perpetual maintenance of common areas. See Ex. 13.

B. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed in Part IV. A. above, the Hearing Examiner agrees with Technical Staff and the Planning Board that the subject application would be in substantial compliance with the *Fairland Master Plan*. The preponderance of the evidence also establishes that on balance, the proposed development would have more beneficial than detrimental impacts on public facilities.

The evidence demonstrates that the proposed development would not have any adverse impact on existing roadways in the area, and would have a beneficial impact on the local road network by extending Cedar Tree Drive to Old Gunpowder Road in Prince George's County, creating an alternative access point for the existing Saddle Creek neighborhood. The evidence also demonstrates that under the AGP, the proposed development would have no adverse impact on local schools. Moreover, if the County builds a new elementary school on the site provided on the Land Use Plan, the net result will be a substantial benefit to school conditions, at least at the elementary level. An elementary school centrally located between two neighborhoods would have additional public benefits, providing a focal point for activity and promoting community involvement.

In addition to providing a public school site, implementation of the Development Plan would result in a net increase in parkland on the subject property. A number of parcels would change hands, and ultimately the County would hold title to all of the land underlying the new golf course, plus its existing property in the southern spike. Moreover, the public would benefit from the environmental

restoration and reclamation the private developers would perform on extensive areas of the site, without public financial contribution, including on property that ultimately would be in public ownership.

The Opposition in this case argued, as discussed in Part III.L. above, that the proposed development would adversely affect the public interest by destroying valuable and well-loved park facilities, including trails, the existing golf course and natural areas. While the Opposition raised legitimate concerns about losing their favorite park facilities, the Hearing Examiner is persuaded that overall, the public interest favors the requested rezoning. Many fans of Gunpowder Golf Course clearly would be disappointed to see their favorite golf course replaced, but many people – including, hopefully, those who currently play at Gunpowder – would be able to enjoy playing at the new golf course, which to many people would be superior. The evidence showed that important concerns like affordability can appropriately be addressed at later stages of the approval process.

Similarly, many bikers, hikers and equestrians would miss the existing paved trail and whatever informal trails would be relocated for the proposed development. However, the emphatic testimony of the responsible Trail Planning Supervisor demonstrated that no matter what else happens, the paved trail would be relocated in a way that provides a connection between the Montgomery County and Prince George's County park areas in a pleasant, natural setting. Moreover, MNCPPC Technical Staff clearly intend to make every effort to preserve and improve the network of informal trails running through Fairland Park as part of their preliminary plan review.

As the Opposition pointed out, some of the natural features on the subject property would be adversely affected by the proposed development – trees would be cut down and some stream buffers cleared. However, for the reasons stated in Part V.A above, the Hearing Examiner is persuaded that on balance, the environmental benefits of the proposed development would outweigh its adverse impacts.

Accordingly, having carefully weighed the totality of the evidence, the Hearing Examiner concludes that approval of the requested zoning reclassifications would be in the public interest.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I reach the conclusions specified below.

A. Development Plan

1. The requested reclassifications to the PD-2 Zone are in substantial compliance with the use and density recommended by the *Fairland Master Plan*. They do not conflict with the county capital improvements program or any other county plan or policy.

2. The Development Plan would comply with the purposes, standards, and regulations of the PD-2 Zone, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

3. The Development Plan proposes internal vehicular and pedestrian circulation systems and points of external access that would be safe, adequate and efficient.

4. By its design, by minimizing grading and by other means including environmental restoration and reclamation, the proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site. Applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 would be satisfied.

5. The submitted documentation of the intended ownership and method of perpetual maintenance of areas to be used for recreational or other common or quasi-public purposes is adequate and sufficient.

B. Zoning Request

Application of the PD-2 Zone at the proposed locations would be proper for the comprehensive and systematic development of the County because the proposed development:

1. Would serve the public interest;
2. Would be in substantial compliance with the applicable master plan; and
3. Would satisfy the purposes, standards and regulations of the zone.

VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-813, requesting reclassification from the RE-2 Zone to the PD-2 Zone of 295.94 acres, and Zoning Application No. G-814, requesting reclassification from the R-200 Zone to the PD-2 Zone of 18 acres, all such land being located along the border between Montgomery County and Prince George's County, south of MD 198 and east and north of Greencastle Road in the 5th Election District, be ***granted*** in the amount requested and the Development Plan approved, subject to the specifications of the Land Use Plan, Exhibit 95(a), which forms its central component, provided, however, that within ten days of receipt of the District Council's approval resolution, the Applicants must submit a reproducible original and three copies of the approved Land Use Plan, Exhibit 95(a), with the heading "Proposed Binding Elements" changed to "Written Binding Elements," for certification in accordance with § 59-D-1.64 of the Zoning Ordinance.

Dated: February 11, 2004

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner

MNCPPC witnesses who were testifying on behalf of the MNCPPC as an applicant were listed as part of the Applicants' case in chief. MNCPPC witnesses who were testifying as Technical Staff reviewing a rezoning application were listed separately in the summary of testimony under "Park & Planning."